***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 75-7132

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P/S

# United States Court of Appeals

**For the Second Circuit.**

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CHARLES JAMES,

*Plaintiff-Appellee,*

*against*

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 OF THE TOWNS OF ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY AND CANISTEO; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School, and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

*Defendants-Appellants.*

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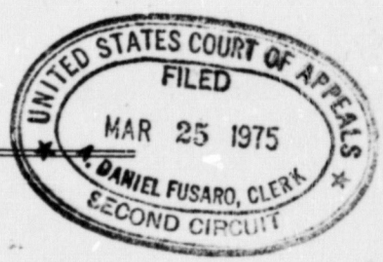


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THE REPORTER COMPANY, INC., Walton, N. Y. 13856—607 865-4131—1975

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -X

CHARLES JAMES,

*Plaintiff-Appellee,*

*against*

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTED; STEUBEN COUNTY, New York; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

*Defendants-Appellants.*

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# DOCKET ENTRIES.

Civ-1971-164 Charles James v. The Board of Education of Central District No. 1, etc.

| DATE 1971 | PROCEEDINGS | Date Order or Judgment Not'd |
|---|---|---|
| Apr. 14 | Filed Complaint | |
| 14 | Issued summons & 4 copies | |
| 14 | JS 5 made | |
| May 11 | Filed summons & 4 Mar.ret.on S&C-served 5/6/71 | |
| 17 | " Stipulation extending Defts'.,time to answer to 6/10/71 | |
| June 10 | " Defts'. Answer | |
| 28 | " Affidavit, Notice of Motion & Order granting motion for leave to file brief Amicus Curiae-Burke, J | F-117 |
| Aug. 20 | " Defts'.,Motion to Dismiss & for Summary Judgment-ret.9/13/71 at Roch.9/27/71-submitted | |
| Sept.27 | " Pltf's. Affidavit (filed at trial) | |
| Dec. 23 | " Decision & Summary Judgment granting Defts'.motion for summary judgment and dismissing the complaint-Burke, J (notice to Messrs. Gutman, Neuborne, Freeman, Schwartz, Treinin, Stone & Jehu) | F-123 |
| 23 | JS 6 made | |
| 1972 | | |
| Jan. 7 | Filed Pltf's. Notice of Appeal (copy mailed to Mr. Treinin and to Clerk, CCA with copy of docket entries) Let form Romaine 1/7/72 | |
| 26 | Original papers, exhibits, docket entries and Clerk's certificate mailed to Clerk, CCA | |
| July 13 | Filed opinion and judgment of CCA reversing judgment of District Court and remanding for proceedings not inconsistent with opinion with costs to be taxed against defendants-appellees in the amount of $724.35 | |
| 13 | JS 5 made | |
| Aug. 11 | Filed Pltf's.Affidavit & Notice of Motion to enforce mandate of the Second Circuit-ret.8/11/72-Decision Reserved | |
| 11 | " Defts'.Affidavit in opposition to motion to enforce mandate of Second Circuit | |
| 11 | " Deft.,Edward J. Brown, Affidavit in opposition to motion to enforce mandate of Second Circuit | |
| 11 | " Decision & Order directing Defts'.to reinstate Pltf.,as a teacher pending final disposition of this action and an application for a stay of this order will not be entertained by the court-Curtin, J (notice & copy to Messrs.Neuborne & Treinen) | F-131 |
| 1973 | | |
| Jan. 22 | Original papers and exhibit returned from CCA | |
| Sept.27 | Filed Pltfs. affidavit and notice of motion for injunction relief & partial summary judgment ret. 10-9-73. | |
| Oct. 9 | " Deft's. affidavit of Richard J. McDonald. | |
| 9 | " Deft's affidavit of Edward J. Brown. | |
| 9 | " Deft's affidavit of Harry Treinin | |
| 9 | " Deft's testimony of Pltf. on EBT | |
| 9 | Motion by Pltf. for injunction relief & partial summary judgment, to be submitted in two weeks. | |
| 29 | Filed decision disqualifying himself from further participation in this case-Burke, DJ Notice to Messrs. Neuborne, Gutman, Schwartz Freeman Treinin & Commissioner of Ed. of N.Y. Amicus Curiae | F-145 |
| Nov. 19 | After oral argument, the Ct. reserved decision. | |
| 1974 | | |
| Apr. 16 | Filed Pltfs. motion to consolidate with Civ-74-175 ret. 5-14-74 (w.d.n.y. 74-175) | |
| | CLOSED Transcribed for [illegible] | |

# DOCKET ENTRIES



Charles James v. The Board of Education of Central Dist. No. 1, etc. et al

D. C. 110 Rev. Civil Docket Continuation

| DATE 1974 | PROCEEDINGS | Date Judgm |
|---|---|---|
| May 14 | Filed Defts. affidavit in opposition to Pltfs. application to consolidate with Civ-74-175 for trial (in Civ-74-175) | |
| June 17 | Ret. date for brief. Received. | |
| July 9 | Case called to trial before Judge Curtin w/o a jury | |
| 10 | Trial cont'd | |
| 11 | Filed deposition of Kenneth B. Clark (notice to attorneys) | |
| 11 | Trial cont'd - both sides rest; counsel to submit proposed rulings of law, etc., after receipt of transcript and date will be set by court by notice. | |
| Aug. 5 | Filed Ct. Steno. minutes of proceedings of 7-9-74 | |
| 5 | " Ct. Steno. minutes of proceedings of 7-10-74 | |
| 5 | " Ct. Steno. minutes of proceedings of 7-11-74. | |
| Nov. 19 | Filed decision & order directing the Clerk to enter judgment in the amt of $20,964.25 in favor of the pltf. with costs. Parties shall attempt to stipulate to reasonable attys fees to be paid by defts. etc.-Curtin, DJ Notice & copies to Burt Neuborne and Harry Treinin | F-J |
| 19 | JS 6 made | |
| 19 | Filed judgment in favor of pltf. in the amt. of $20,964.25 with costs -Clerk Notice & copies to Burt Neuborne & Harry Treinin | F- |
| Dec. 4 | Filed Pltfs. motion for order correcting the judgment ret. 12-9-74. adj. to 12-16-74 adj. to 12-30-74 for Pltfs. response. Submitted. | |
| 16 | " Defts'. Affidavit in opposition to Pltf's. motion to correct judgment | |
| 19 | " Defts'. Notice of Appeal ( copy mailed to Messrs. Neuborne, Freeman, Schwartz and Jehu and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Treinin) | |
| 23 | Filed Pltfs. supplement to the affidavit previously filed, dated 12-13-74 | |
| 1975 | | |
| Jan. 21 | Filed Pltfs. 2nd reply affidavit. | |
| 30 | Filed Pltfs. affidavit in support of pltfs' motion to amend the judgment entered on 11-19-74 etc. | |
| 30 | " Defts. affidavit in reply to pltfs. affidavit dated 12-26-74. | |
| 30 | Filed order that the interest in the amt of 3% per annum is granted against the Bd. of Education and in the amt. of 6% per annum against each of the other named defts. Pltfs. application for reasonable attys. fees is granted, counsel are directed to attempt to agree upon the amt., if they cannot pltf. shall file a detailed statement of the reason for the granting of a fee by 3-3-75, deft. to respond by 3-17-75 Curtin, DJ Notice & copies to Burt Neuborne & Harry Treinin | F- |
| 31 | Filed judgment including pre-judgment interest in the amt. of 3% per annum against the Bd. of Education & 6% per annum against each of the other named defts.-Clerk Notice & copies to Burt Neuborne and Harry Treinin | F- |
| Feb. 13 | " Defts'. Notice of Appeal (copy mailed to Messrs. Neuborne, Freeman, Schwartz and Jehu and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Treinin) | |
| Mar. 11 | Filed letter to Judge Curtin dated 3-8-75 from Harry Treinin re Attys. fees. | |
| | CLOSED Appeal | |

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - x

CHARLES JAMES,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTED; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central District No. 1; CARL PILLARD, Principal, Addison High School; and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants.

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COMPLAINT

## I. JURISDICTION

1. The jurisdiction of this Court is invoked under Title 28 U.S.C. §2201 et seq and Title 28 U.S.C. §1343(3) et seq, this suit being authorized by Title 42 U.S.C. §1983. This is an action for declaratory relief, compensatory damages and injunctive relief to prevent the further deprivation under the laws, customs and usages of the State of New York of rights, privileges and immunities secured to the plaintiff by the First and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is conferred upon this Court by Title 28 U.S.C. §1343(3).

## II. PARTIES

2. a) Plaintiff, CHARLES JAMES, was a teacher of eleventh grade English at Addison High School until he was dismissed by the defendants for wearing a black armband on his sleeve on December 12, 1969. He is a resident of Pine City, New York.

b) Defendant, BOARD OF EDUCATION OF CENTRAL DISTRICT NUMBER 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY AND CANISTED, New York (hereafter, Central District No.1) is the duly constituted corporate entity exercising direction and control over public education in the above-described geographical area of New York State. Central District No. 1 exercises direction and control over public education at Addison High School.

c) Defendant, EDWARD J. BROWN, is, and at all times relevant hereto was, the District Principal of Central District No. 1, and, upon information and belief, is the Chief Executive officer of the public schools operated by Central District No. 1.

d) Defendant, CARL PILLARD, is, and at all times relevant hereto was, the Principal of Addison High School.

e) Defendant, ROBERT ANDREWS, is and at all times relevant hereto was, President of the Board of Trustees of Central District No. 1.

## III. THE INCIDENT AT ISSUE

3. On June 7, 1969, CHARLES JAMES was engaged as an English teacher at Addison High School. He was dismissed on January 13, 1970. Apart from the "black armband incident" described below, all concede that he performed his teaching duties at Addison High School in a highly satisfactory manner.

4. On November 14, 1969, prior to reporting to school, CHARLES JAMES, affixed a black armband to his jacket in order to express his sense of anguish over the widespread loss of life in connection with the war in Vietnam. It was James' intention by wearing a black armband, the traditional sign of mourning, to express his deep religious conviction as a practicing Quaker that the existence of war, in any form, could not be reconciled with the teachings of the Religious Society of Friends (Quakers).

5. The black armband which plaintiff affixed to his sleeve on November 14, 1969, had been prepared by the Elmira Meeting of the Religious Society of Friends (Quakers) of which plaintiff is an active member. November 14, 1969 had been designated by the Elmira Meeting and by other religious organizations as a nationwide day of mourning for those killed in Vietnam.

6. Shortly after the opening of school on November 14, 1969, the defendant, PILLARD, entered plaintiff's home room and observed plaintiff's black armband, but made no comment concerning it. Midway through the second period, plaintiff was summoned from his class to the defendant PILLARD's

office where he was asked his reason for wearing a black armband. Plaintiff answered: "Because I am against killing." The defendant PILLARD stated that if he permitted plaintiff to continue to wear a black armband, parents and other members of the community outside the school, particularly those who vote on the school budget, would become incensed. The defendant PILLARD, thereupon, and without other stated reason, ordered plaintiff to remove the black armband immediately. When plaintiff refused, the defendant PILLARD ordered him to report to the defendant BROWN's office.

7. After insuring that his class remained in order, plaintiff reported to the defendant BROWN's office, where he was, once again, asked his reason for wearing a black armband. Once again, plaintiff replied: "Because I am against killing." The defendant BROWN, thereupon, ordered plaintiff to remove the armband, accusing plaintiff of engaging in a political and illegal act against President Nixon. Plaintiff attempted to assure the defendant BROWN that the wearing of the black armband was not motivated by political considerations, but stemmed from a genuine religious aversion to killing. Nevertheless, the defendant BROWN ordered him to remove the black armband, threatening suspension and termination if he persisted. When plaintiff refused, he was ordered to leave the school immediately.

8. After arranging for the supervision of his

class, plaintiff left Addison High School and proceeded to the Quaker Meeting House in Elmira where he participated in a prayer vigil seeking the end of war in any form.

9. At no time on November 14, 1969, or at any time thereafter, was it even alleged that plaintiff's wearing a black armband caused or threatened any interference whatever to the normal operation of Addison High School.

10. At no time on November 14, 1969, or at any time thereafter, was it even alleged that plaintiff attempted to impose his political or religious views upon his students.

11. On Saturday, November 15, 1969, plaintiff received a communication from defendant, CENTRAL BOARD No. 1 confirming his suspension, but permitting him to return to his duties immediately, provided that he engage in no political activity while in school.

12. Since the incident which had precipitated his suspension had been motivated overwhelmingly by religious conscience, plaintiff returned to school on November 17, 1969, hopeful that the entire incident was closed.

13. On December 12, 1969, the Elmira Meeting of the Religious Society of Friends (Quakers) once again prepared black armbands as a sign of mourning for all those killed in war. Plaintiff, viewing the black armbands as the expression of a deeply felt religious conscience, once again wore a black armband to Addison High School on December 12, 1969.

14. Plaintiff was summarily suspended from his teaching duties by defendant, BROWN, and on January 13, 1970, was fired by defendant CENTRAL BOARD NO. 1, without a hearing, solely as the result of his wearing the black armband in question.

15. At no time on December 12, 1969, or at any time thereafter, was it even alleged that plaintiff's wearing a black armband had caused or threatened any interference whatever to the normal operation of Addison High School.

16. At no time on December 12, 1969, or at any time thereafter, was it even alleged that plaintiff attempted in any way to impose his political or religious views upon his students.

17. Plaintiff exhausted his New York State administrative remedies by unsuccessfully appealing defendants' actions to the New York State Commissioner of Education. His appeal was denied on September 23, 1970.

18. Plaintiff has been unable to secure employment as a public school teacher since his dismissal by defendants.

19. Plaintiff incurred substantial medical expenses subsequent to his dismissal which would have been reimbursed pursuant to his insurance coverage had he not been unlawfully dismissed.

20. Upon information and belief, many teachers at Addison High School regularly display symbols of religious

conscience, including crucifixes, religious medalions and Masonic jewelry without incurring disciplinary sanctions. In addition, upon information and belief, at least one teacher at Addison High School has, without incurring disciplinary sanction, prominently displayed the slogan "Peace with Honor" on a bulletin board in his classroom to express his support for the Government's policy in Vietnam.

21. Upon information and belief, teachers in neighboring high schools have worn black armbands to school on several occasions without incurring disciplinary sanctions.

## IV. CAUSES OF ACTION

22. The action of the defendants in dismissing plaintiff for engaging in a non-disruptive display of religious conscience infringed upon plaintiff's constitutionally protected right to the free exercise of his religion.

23. The action of defendants in dismissing plaintiff for engaging in a non-disruptive expression of conscience infringed upon plaintiff's constitutionally protected right of free speech and free expression.

24. The action of defendants in dismissing plaintiff without affording him any hearing whatever constituted a violation of plaintiff's right to be free from the deprivation of property without due process of law.

25. The action of defendants in dismissing plaintiff for engaging in a non-disruptive display of religious

conscience, while freely permitting other faculty members to engage in displays of religious conscience, constituted a denial of the equal protection of the laws.

26. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays that this Court:

a) declare that defendants have violated plaintiff's right to the free exercise of his religion by dismissing him for engaging in a non-disruptive display of religious conscience;

b) declare that defendants have violated plaintiff's rights of freedom of speech and freedom of expression by dismissing him for engaging in a non-disruptive display of conscience;

c) declare that defendants have violated plaintiff's right to due process of law by dismissing him without any hearing whatever;

d) declare that defendants have violated plaintiff's right to equal protection of the laws by singling him out for dismissal, despite the fact that other faculty members prominently engage in non-disruptive displays of religious conscience.

e) grant plaintiff compensatory damages in the sum of $25,000.00 which may be proved to have stemmed from the defendants' unlawful acts.

f) grant plaintiff appropriate equitable relief compelling defendants to remove any reference to the unlawful dismissal of plaintiff from their records.

g) grant plaintiff appropriate equitable relief compelling defendants to reinstate him as a faculty member at Addison High School; and

h) grant such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
April 7, 1971

Respectfully submitted,

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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK



CHARLES JAMES,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK, EDWARD J. BROWN, District Principal, Central School District No. 1 CARL PILLARD, Principal, Addison High School and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants.

ANSWER

CIV 1971-164

The defendants for an answer to the plaintiff's complaint allege and respectfully show to the Court as follows:-

1. Deny the allegations in paragraph 1.

2.A. Admit the allegations in paragraph 2A that plaintiff was a teacher of eleventh grade English at Addison High School but deny the allegations that plaintiff was dismissed solely for wearing a black arm band. Defendants have no knowledge or information sufficient to form a belief as to the residence of plaintiff.

2.B.C.D.E. Admit the allegations contained in paragraphs 2B, 2C, and 2D and that Robert Andrews was at all times relevant hereto President of the Board of Education of Central School District No. 1.

3. Admit the allegations in paragraph 3 that plaintiff was engaged as an English teacher and was dismissed on January 13, 1970, but deny the remaining allegations in said paragraph.

HARRY TREININ
ATTORNEY AT LAW
11 EAST MARKET ST.
CORNING, N. Y.

4. Admit the allegation in paragraph 4 that on November 14, 1969 plaintiff affixed a black armband to his jacket and wore it in his classroom, but deny any knowledge or information sufficient to form a belief as to the remainder of the allegations in said paragraph.

5. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of the complaint.

6. Admit that the defendant Pillard observed the arm band on plaintiff and discussed the matter with plaintiff after checking with defendant Brown. That after further discussion said defendant asked plaintiff to go to Mr. Brown's office. Deny the other allegations of paragraph 6 of the complaint.

7. Deny the allegations alleged in paragraph 7 of the complaint but admit the circumstances as set forth in the attached affidavit of Mr. Brown relating the circumstances in regard to the matters alleged in said paragraph.

8. Admit the allegations contained in paragraph 8 of the complaint that plaintiff left the high school but deny that he arranged for the supervision of his class and deny any knowledge or information sufficient to form a belief as to the remainder of the allegations in said paragraph.

9. Deny the allegations of paragraph 9 of plaintiff's complaint and allege that his wearing of the arm band taught his students only one aspect of a highly controversial subject not within the purview of his teaching assignment. That said action constituted an unethical practice by a member of the teaching profession contrary to sound educational principals.

HARRY THUNIN
ATTORNEY AT LAW
11 EAST MARKET ST.
CORNING, N. Y.

10. Deny the allegations in paragraph 10 of plaintiff's complaint.

11. Admit the allegations in paragraph 11.

12. Admit that plaintiff returned to school on November 17 1969, but deny knowledge or information sufficient to form a belief as to the remainder of the allegations in said paragraph.

13. Admit the allegation in paragraph 13 that plaintiff wore an arm band on December 12, 1969 in his classroom in the Addison High School, but deny that they have knowledge or information sufficient to form a belief as to the reaminder of the allegations in the said paragraph.

14. Admit the allegation in paragraph 14 that plaintiff was suspended from his teaching duties on January 13 and was dismissed by Central School District No. 1 but deny that his dismissal was solely by reason of his wearing the black arm band in question.

15. Deny the allegations of paragraph 15 of plaintiff's complaint and allege that this wearing of the arm band taught only one aspect of a highly controversial subject that it constituted an unethical practice by a member of the teaching profession and was contrary to sound educational principals that it constituted an act of insubordination.

16. Deny the allegations in paragraph 16.

17. Deny the allegations in paragraph 17, and allege that Section 310 of the Education Law of the State of New York encompasses all the Constitutional protections which the plaintiff alleges have been infringed by defendants and that those rights

HARRY TREININ
ATTORNEY AT LAW

were safeguarded by an appeal to the Supreme Court of the State of New York and to the higher courts of that State.

18. Deny any information or knowledge sufficient to form a belief as to the allegations contained in paragraph 18.

19. Deny any information or knowledge sufficient to form a belief as to the allegations contained in paragraph 19.

20. Deny any information or knowledge sufficient to form a belief as to the allegations contained in paragraph 20.

21. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 21 and deny the relevance of such alleged facts to the issues herein set forth.

22. Deny the allegations in paragraph 22.

23. Deny the allegations in paragraph 23.

24. Deny the allegations in paragraph 24.

25. Deny the allegations in paragraph 25.

26. Deny the allegations in paragraph 26 of plaintiff's complaint and allege that he had a remedy relevant to himself pursuant to the laws of the State of New York of which he availed himself in part.

27. Deny any other allegations of said complaint not heretofore admitted, controverted or denied.

FIRST DEFENSE

28. The complaint fails to state a claim against the defendants upon which relief can be granted.

HARRY TREININ
ATTORNEY AT LAW

SECOND DEFENSE

29. That the Court has no jurisdiction of the matters alleged because no substantial Federal question has been alleged in the complaint and because the existence of the questions raised is foreclosed by previous decisions of the Supreme Court.

30. That the Court has no jurisdiction of the matters alleged because the matters raised are so insubstantial as not to present a case for Federal intervention.

THIRD DEFENSE

31. That the decision of the Commissioner of Education in the proceeding brought by the plaintiff against Central School District No. 1 disposes of all the issues in this action. (Exhibit B) That said decision is final and not open to collateral attack. That the only means by which review may be had in such circumstances is through direct review or in an Article 78 proceeding pursuant to the laws of the State of New York.

FOURTH DEFENSE

32. That the plaintiff did not fully exhaust all the State remedies available to him and now cannot assert that he had no opportunity to make his Constitutional case as was afforded to him in the New York State and Federal Constitution.

FIFTH DEFENSE

33. That petitioner was a probationary teacher, that he was dismissed during said probationary period upon the recommendation of the District Superintendent of Schools by the unanimous vote of the Board in accordance with the provisions of

Section 3013 sub. 1 of the Education Law of the State of New York.

That by virtue of said action by the Board, the issues raised by the plaintiff are now moot and academic.

SIXTH DEFENSE

34. That the petitioner returned to his position on November 17, 1969, subject to the conditions set forth in the letter of the Board, dated November 15 1969 (Exhibit C). That he violated such conditions by his action in wearing the arm band on the second occasion that said conduct was not only unethical and illegal, but constituted insubordination in that he refused to follow a reasonable direction of the Board.

Upon information and belief, that he returned to his position on December 7, 1969, with the intent to violate the direction of the Board by the wearing of the arm band on future Moratorium days.

SEVENTH DEFENSE

35. That the petitioner was teaching eleventh grade English on the occasions set forth in the petition. That the wearing of the arm band was a political act stating a personal, political and partisan position. That on the days he wore the said arm band, large demonstrations were taking place in Washington and in many other cities throughout the Country, demonstrating against the position of the Government in reference to its conduct of the Viet Nam War. That the said arm band was a symbol of petitioner's adherence to the political position taken by those disagreeing with action taken by the Administration

in the conduct of said war. That petitioner's action had the effect of stating his personal political position in respect to the Administration's action and was intended to convey his political position to his students and to secure their agreement with and adjerence to the petitioner's position in respect to the acts of the Administration in its conduct of said war. That the wearing of said arm band constituted partisan political activity contrary to the ethics of the teaching profession and constituted improper conduct on the part of a teacher in the classroom.

EIGHTH DEFENSE

36. That the defendant violated the joint code of ethics adopted by both the New York State Teacher's Association and the New York School Board Association. That said code of ethics provides as follows:-

> 4. The teacher and the school board recognize their obligations to develop growing appreciations and understanding of the principles of democracy; they refrain from using the school to promote personal views on religion, race or partisan politics. (Underscoring supplied). (Page 8, Code of Ethics. Their Interpretation and a Bill of Rights for Teachers.

The Code of Ethics in addition provides as follows:-

> In fulfilling his obligation to the student the educator:-
>
> 1. Shall not, without just cause restrain the student from independent action in his pursuit of learning and shall not, without just cause deny the student access to varying points of view. (Underscoring supplied)
>
> 2. Shall not deliberately suppress or distort subject matter for which he bears responsibility.

NINTH DEFENSE

37. That the plaintiff violated his commitment to the public in that he violated the provisions of the Code of Ethics providing as follows -

In fulfilling his obligation to the public the educator...

4. Shall not use institutional privileges for private gain or to promote political candidates or partisan political activities.

31. The professional teacher exercises good judgment in political activity. He properly may urge friends and acquaintances to support a school bond issue or to vote for candidates in any election. The use of school time or school premises for partisan political activity is improper. (Underscoring supplied)

TENTH DEFENSE

38. That prior to the Moritorium Days the State Department of Education issued a memorandum through the Deputy Commissioner, Herbert N. Johnson dated November 7 1969 and a copy of said memorandum is attached hereto as Exhibit D and that the plaintiff violated the provisions of said memorandum which governed the actions of all school personnel in regard to the observance of Moritorium Day.

ELEVENTH DEFENSE

39. The allegations of the complaint indicate that the plaintiff intended to practice the precepts of his religion in the classroom and that this constituted a violation of the separation of Church and State as mandated by the Constitution

of the State of New York and the Constitution of the United States.

WHEREFORE, defendants request judgment dismissing plaintiff's complaint together with costs and disbursements of this action.

Dated: June 4, 1971.

Yours, etc.,

HARRY TREININ
Attorney for Defendants
Office and Post Office Address
11 East Market Street
Corning, New York 14830
Telephone: AC 607 962-3167

To:

John K. Adams, Clerk
United States District Court
for the Western District of New York
United States Court House
Niagara Square
Buffalo, New York 14202

Herman Schwartz, Esq.
State University of New York at Buffalo
School of Law
77 West Eagle Street
Buffalo, New York 14202

Jeremiah S. Gutman, Esq.
Burt Neuborne, Esq.
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011

Harrop Freeman, Esq.
Cornell Law School
Ithaca, New York 14850

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK
CHARLES JAMES

Plaintiff.

-against-

CIV 1971 1/4

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON PATTERSON TUSCARORA, WOODHULL, THURSTON, ERWIN LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK EDWARD J. BROWN, District Principal, Central School District No. 1 CARL PILLARD Principal, Addison High School and NORBERT ANDREWS, President of the Board of Trustees of Central District No. 1

AFFIDAVIT

Defendants.

STATE OF NEW YORK)
) ss
COUNTY OF STEUBEN)

EDWARD J. BROWN being duly sworn, deposes and says -

1. I was the District Principal of the Addison Central School on November 16, 1969.

2. On the morning of Friday, November 14, 1969 Mr. Carl Pillard, High School Principal, informed me that Mr. Charles James, a teacher of eleventh grade English, had appeared at the school wearing a black arm band.

3. Mr. Pillard inquired what action he should take. I directed him to call Mr. James to his office and ask him to remove the armband. I further directed that if Mr. James refused to do so, Mr. Pillard should refer him to me. I was later informed that Mr. James refused to remove the arm band.

4. When Mr. James arrived at my office, we discussed our respective opinions regarding whether or not he as a teacher had a right to wear a black arm band in conjunction with the "National Moratorium" and as a symbol of his protest against the Viet-Nam War.

5. I explained to Mr. James that it was my opinion that the Moratorium was a political activity and as such it was unethical and illegal forhim as a teacher to use the school as a forum for expressing his political views either symbolically or vocally.

6. I assured him that I recognized his right to hold any political views and to participate in political activities when not on duty as a teacher in the school. I felt that his wearing an arm band while on duty as a teacher was not proper. I also explained to Mr. James that teachers could discuss controversial issues in school when they were timely and pertinent to the course being taught, but that right also carried with it the obligation to present objectively all known points of view on the issues. Having done this, the teacher could let it be known what his personal views were - emphasizing the rights of others to hold opposing views.

7. I explained to Mr. James that in my opinion his wearing the arm band would tend to be disruptive and would possibly encourage pupiles to engage in disruptive demonstrations ... I also explained that his action would possibly have a divisive effect on the teachers. That in taking action it was

my duty to consider not only the immediate situation, but also long range effects of his actions.

8. I told Mr. James that I would obtain legal counsel regarding his rights and obligations, as well as those which applied to the District Principal and the Board of Education, but that this would take a little time. In the meantime it would be necessary for me to insist on his removing the arm band before returning to his teaching assignment and that his refusal to comply would necessitate my suspending him until such time that I had further direction from legal counsel and the Board of Education.

9. I assured Mr. James that if it were established that I was not correct in my decision regarding his situation, there would be no loss of pay during his suspension: otherwise, the Board of Education would determine the duration of his suspension and possible loss of pay.

10. Mr. James explained his reasons for wearing the armband and stated that it was a matter of principal upon which he felt obligated to stand. He refused to remove the arm band.

I informed him that he was suspended, that he should return to his classroom to pick up his personal effects and leave the school. I informed him that I would contact him as soon as possible after consulting with the Board of Education and the School Attorney.

11. This discussion between Mr. James and myself lasted between one-half and three-quarters of an hour. He was not summarily informed to remove the arm band or leave the school as his complaint implies. The direction was given only after a lengthy discussion and after he refused to follow my decision that he must remove the arm band to remain in his classroom.

/s/ Edward J. Brown L.S.
EDWARD J. BROWN

Subscribed and Sworn to
before me this 4th day
of June, 1971.

/s/ Thomas Treanor
NOTARY PUBLIC

No 8195

# The University of the State of New York

## The State Education Department

Before the Commissioner

IN THE MATTER

of the

Appeal of CHARLES JAMES from action of the Board of Education of Central School District No. 1 of the Towns of Addison, Cameron, Rathbone, Tuscarora, Woodhull, Thurston, Erwin, Lindley and Canisteo, Steuben County, relating to the dismissal of a probationary teacher.

---

Levy, Gutman & Goldberg, Esqs. ..... Attorneys for Petitioner
Jeremiah S. Gutman, Esq.,
of Counsel

Harry Treinin, Esq. ..... Attorney for Respondent

---

Petitioner, a probationary teacher of English at Addison Central High School in respondent's district, was suspended by respondent for wearing a black armband in class on November 14, 1969, a Vietnam Moratorium Day. Thereafter, he was informed by respondent that he could return to his teaching duties with the understanding that he "engage in no political activity while in the school." On December 12, 1969, another Vietnam Moratorium Day, petitioner again wore a black armband to class. As a result of this action, petitioner was suspended on that day and, on January 13, 1970, was dismissed in accordance with the provisions of Education Law section 3013, subdivision 1. The pertinent part of that subdivision reads as follows:

> "Teachers shall be appointed for a probationary period of not to exceed five years . . . . Services of a person so appointed . . . . may be discontinued at any time during such probationary period, upon the recommendation of the district superintendent, by a majority vote of the board of education."

Exhibit B

Commissioners of Education, as well as the Courts, have consistently held that such probationary teachers have no vested rights to be continued in their positions and that the services of a probationary teacher may be discontinued without a hearing and without giving or explaining the reasons for such action.

> "The making of a permanent contract with tenure constitutes a long commitment that should not be incurred without the most careful consideration. The screening of candidates by the principal and district superintendent to select those whose technical training and experience make them eligible for consideration is doubtless a wise requirement of the law. On the other hand, it may well be that a teacher with satisfactory technical qualifications might have certain personal characteristics and attitudes that would prevent him from acting in harmony with his associates and fitting into the requirements of a particular school. In such a case the judgment and discretion of the board, made up of men and women of standing and experience, are most valuable safeguards in the selection of a permanent teaching staff for carrying on the work of the school. The Legislature has not seen fit to abrogate the power of the board in making permanent contracts."
>
> (McMaster v. Owens, 275 App. Div. 506, 509.)

(Peo. ex rel. Graves v. Barber, 193 Misc. 326; Carter v. Kalamejski, 275 App. Div. 604, affd. 280 N.Y. 803; Walcott v. Fisher, 274 App. Div. 339, affd. 299 N.Y. 688; Hickey v. Carey, 275 App. Div. 949; Board of Education v. Allen, 283 App. Div. 376; Pinto v. Wynstra, 22 AD 2d 914; Matter of Coleman (1920), 22 State Dept. Rep. 322; Matter of Coleman, 69 id. 20; Matter of Sullivan, 74 id. 52; Matter of McIntyre, 2 Ed. Dept. Rep. 197; Matter of Butler, 6 id. 71, affd. 29 AD 2d 799; Matter of Nazzaro, 7 id. 31; Albaum v. Carey, 310 F. Supp. 594.)

The essence of the appeal, however rests in petitioner's claim that his dismissal was in violation of his constitutional rights.

Petitioner alleges that by wearing a black armband he was exercising his right of free speech under the First Amendment to the United States Constitution, and contends that, by dismissing him respondent has violated this Constitutional right. Petitioner seeks an order reinstating him to his former position with back pay from the date of his dismissal, and directing respondent not to suspend or dismiss him in the future without just cause shown.

Respondent alleges that the wearing of the black armband in class was a political act expounding to the students only one side of a controversial issue and, as such, constituted an unethical practice by a member of the teaching profession. Respondent further alleges that, by wearing a black armband a second time, despite a reasonable direction by respondent not to do so, petitioner was guilty of insubordination. For these reasons respondent contends that its dismissal of petitioner was justified.

While I fully agree that a board of education has broad powers over a probationary teacher and may dismiss a probationer without giving a reason, the exercise of these powers by a board must be made "within the ambit of the purpose for which they were granted and in a manner consistent with our basic Constitutional framework" (Matter of Collins, 9 Ed. Dept. Rep. ____, Decision No. 8051 dated August 26, 1969). Therefore, where it is established that a probationary teacher is dismissed for reasons which may be violative of his Constitutional rights, the mere fact that the procedural requirements of section 3013 have been met will not render an appeal from such a dismissal moot, and a determination

of the legality of such action is in order. Respondent's allegation in this regard must therefore be rejected.

Respondent's allegation that petitioner was insubordinate for failing to adhere to its directive not to wear the armband has merit only if the directive was a reasonable exercise of the Board's authority. If respondent's directive violated petitioner's rights, the directive would be unconstitutional and illegal and petitioner's failure to abide by such a rule could not constitute a ground for disciplinary action. The real issue before me then concerns the right of a school teacher in class to wear a black armband which is expressive, though only symbolically, of a specific viewpoint.

Petitioner's position is based largely on the dictum in Tinker v. School District, 393 U.S. 503, a case dealing solely with the right of students to wear the black armband, that (p. 506):

> "It can hardly be argued that either students or teachers shed their constitutional right to freedom of speech or expression at the school house gate." (Emphasis supplied.)

No decision of the United States Supreme Court has been found, however, addressing itself directly to the question of the right of teachers to express themselves freely in the classroom on any subject they please, regardless of any relationship between such expressions and subject the teacher is engaged to teach.

The Tinker decision itself, however, contains other significant language (p. 506):

> "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students." (Emphasis supplied.) ". . . the Court has repeatedly emphasized the need for affirming the comprehensive authority of the State and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the

> schools . . . . Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities." (Emphasis supplied.)

Most important, however, is the following passage from the majority opinion in Tinker (p. 508):

> "Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students." (Emphasis supplied.)

In Tinker, however, the Court also recognized that free speech is subject to regulation when it stated:

> "We properly read it [the Constitution to permit reasonable regulation of speech-connected activities in carefully restricted circumstances." (Emphasis supplied.)

The Court, even before its decision in Tinker, had recognized that although a person had no Constitutional right to public employment, Constitutional protection does extend to public employees whose continued public employment is subject to only reasonable, lawful and nondiscriminatory regulations (Wieman v. Updegraff, 344 U.S. 183; Slochower v. Board of Higher Education, 350 id. 551). And, as I stated in Collins:

> "Absent an overriding public interest, regulations which impinge upon individual freedom can have no legal force."

The closest precedent for the present case is the decision of the United States Court of Appeals for the District of Columbia Circuit in Goldwasser v. Brown, 417 F. 2d 1169, which, like the present case, involved a teacher of English who insisted on discussing foreign policy and matters of racial prejudice in his classes. In upholding the dismissal of that teacher against his claim of interference with his right to free speech, the Court stated (after noting that the public school teacher in Pickering, 391 U.S. 563, was not dismissed for anything he said in class):

> ". . . . appellant was fired for what he said within the classroom to foreign officers who were supposed to be learning how to cope with an English-speaking dentist or garage repairman, and not for airing his views outside the classroom to anyone who would listen."
>
> ". . . . appellant was not teaching . . . . current events, political science, sociology or international relations."

It is a matter of fundamental educational policy that whatever subject of instruction may be involved, the teacher must present the entire range of information available in relation to such subject. If the subject matter involves conflicting opinions, theories or schools of thought, the teacher must present a fair summary of the entire range of opinion so that the student may have complete access to all facets and phases of the subject. Petitioner in this case, in wearing the black armband in his classroom, was presenting only one point of view on an important public issue on which a wide range of deeply held opinion and conviction exists.

In line with this basic concept, Dr. Herbert F. Johnson, then Deputy Commissioner of Education for Elementary, Secondary and Continuing Education, on November 3, 1969 sent a memorandum to all school administrators, dealing with "Moratorium Days" and the posture of the public schools in relation thereto. The gist of the communication was the need for neutrality and objectivity on the subject on the part of teachers and administrators, and the need for giving appropriate attention to all sides of the questions involved.

The same concepts are incorporated in the Joint Code of Ethics, adopted both by the New York State School Boards Association and the New York State Teachers Association, which specifically considers as unethical the use of schools by teachers and

boards "to promote personal views on religion, race or partisan politics" and to "deny the student access to varying points of view." (Emphasis supplied.)

The term "partisan politics" is not, of course, limited to the politics of political parties, but embraces any political subject on which differing views exist.

It is to be noted also that the Courts arrive at the same conclusion from the constitutional point of view. Mr. Justice Titone, of the Richmond County Supreme Court, in Matter of Nistad, 61 Misc. 2d 60, 64, in ordering the Board of Education of the City School District of the City of New York to conduct school as usual on Moratorium Days, stated:

> "The prestige and power of the Board of Education may not be used to support, influence or condone on matters of this nature."

Similarly, the California Supreme Court, in Goldsmith v. Board of Education, 66 Cal. App. 157, 225 Pac. 783, recognized the problem as follows:

> ". . . . it is to be observed that the advocacy before the scholars of a public school by a teacher of the election of a particular candidate for a public office - the attempt thus to influence support of such candidate by the pupils and through them by their parents - introduces in the school questions wholly foreign to its purposes and objects . . . ."

The wearing of the black armband has been declared to be symbolic speech, i.e., "closely akin to 'pure speech'" and "the type of symbolic act that is within the freedom of speech provision of the First Amendment" (Tinker, supra). It follows that such symbolic speech, in the classroom is a form of teaching and is subject to the strictures of sound pedagogy. The Court of Appeals in O'Connor v. Hendrick, 184 N.Y. 421, 428, in which the Court held

improper the wearing of religious garb by a teacher in a public school classroom, made the following observation:

> "So, also, it would be manifestly proper to prohibit the wearing of badges calculated on particular occasions to constitute cause of offense to a considerable number of pupils, as, for example, the display of orange ribbons in a public school in a Roman Catholic community on the 12th of July." (p. 429).

It should be noted that much broader limitations on First Amendment rights have been sustained by the United States Supreme Court (see United Public Workers v. Mitchell, 330 U.S. 75).

As the Supreme Court stated in Barnette (319 U.S. 624, 637):

> "Free public education if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party or faction."

Since the actions of appellant were contrary to sound educational principles, and since those actions were not constitutionally protected in the circumstances of this appeal, the action of the respondent in terminating appellant's probationary appointment must be sustained.

THE APPEAL IS DISMISSED.

IN WITNESS WHEREOF, I, EWALD B. NYQUIST, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department at the City of Albany, this 23rd day of September 1970.

Ewald B. Nyquist

November 15, 1969

Mr. Charles James
608 Grand Central Avenue
Horseheads, New York 14845

Dear Mr. James:

The Board of Education of Addison Central School District has conferred with counsel and very thoroughly discussed the facts of your situation. The Board has, unanimously, confirmed the action of District Principal Edward J. Brown regarding your suspension on Friday, November 14, 1969.

The Board deems your action to be a political act. As such, it is prohibited in the School. It is, also, deemed unethical action on the part of a teacher to engage in such activity.

You may return to class on Monday, November 17, 1969, with the understanding that you engage in no political activities while in the School.

Of course, the Board recognizes fully your absolute right to express outside of the School any beliefs that you may have.

Very truly yours,

Robert H. Andrews
President, Board of Education

RHA:mlw

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12224

HERBERT F. JOHNSON
DEPUTY COMMISSIONER FOR
ELEMENTARY AND SECONDARY EDUCATION

November 3, 1969

TO: School District Administrators

FROM: Herbert F. Johnson

SUBJECT: Position of Education Department with respect to days of special significance.

Many school officials have asked the Education Department's advice about whether or not to close schools in response to requests of parents and students on future occasions similar to the recent "Moratorium Day."

The right to express individual views on public questions is deeply rooted in the democratic tradition and should be respected. Yet, it is also true that the solution to the problems we face as a nation must be sought through the processes of reason, which means that education is of critical importance to our society. It is, of course, also essential for individual development and well-being.

While it should be emphasized that a decision to close schools must be made by local school officials, the Department recommends that they remain open except on days declared to be holidays by legislative action or by declaration of the Governor. Regular attendance upon instruction is a privilege and a responsibility to be taken very seriously.

Under State law schools must be in session for at least 180 days each year. Many districts maintain school for more than the legal minimum, a practice which is to be commended. It should be noted that the Commissioner is not empowered under law to grant relief from the minimum requirement for occasions such as days of special significance.

Another question frequently asked is whether unusual activities should be scheduled in the schools on days of special significance. This also is a matter for local decision. In some districts, it may be best to carry on no activities. In others, it may seem desirable to provide opportunities for pupils to express their own views and hear those of others. No single policy would apply to all districts. If it should be decided to carry on activities related to the special significance of the day, we would recommend that consideration be given to the following factors:

Exhibit D

1. Appropriate educational activities should be carefully planned so as not to interfere with the educational program of the school.

2. Special educational activities should supplement, rather than replace, normal classroom instruction.

3. The school posture should be neutral and objective. Administrators and staff members should avoid taking positions on controversial matters which may reflect on the objectivity of the school.

4. If controversial statements are to be made by others, efforts should be made to assure that all sides of the question are given appropriate attention.

Please feel free to call on us for further amplification or assistance.

H. J. Rucker

STATE OF NEW YORK)
) ss
COUNTY OF STEUBEN)

I, THOMAS W. LYONS, being first duly sworn, depose and say that I am the President of the Board of Education of Central District No. 1 of the towns of Addison, Cameron, Rathbone, Tuscarora, Woodhull, Thurston, Erwin, Lindley and Canisteo, Steuben County, New York; that I have read the foregoing Answer and know the contents thereof; that the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

/s/ Thomas W. Lyons
THOMAS W. LYONS

Subscribed and Sworn to before me, a Notary Public in and for said County and State, this 4th day of June, 1971.

/s/ Edward J. Lucas
Harry Treinin ~~Harry Treinin~~ Notary Public
Edward J. Lucas

STATE OF NEW YORK)
) ss
COUNTY OF STEUBEN)

I, EDWARD J. BROWN, being first duly sworn, depose and say that I am one of the defendants in the above-entitled action and have knowledge of the facts stated in the foregoing Answer insofar as they relate to me; that I have read such Answer and know the contents thereof and the same is true, except as to the matters stated therein on information and belief, and as to those matters I believe them to be true.

/s/ Edward J. Brown
EDWARD J. BROWN

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 4th day of June, 1971.

/s/ Harry Treinin
Harry Treinin Notary Public

STATE OF NEW YORK)
) ss
COUNTY OF STEUBEN)

I, CARL PILLARD, being first duly sworn, depose and say that I am one of the defendants in the above-entitled action and have knowledge of the facts stated in the foregoing Answer insofar as they relate to me; that I have read such Answer and know the contents thereof and the same is true, except as to the matters stated therein on information and belief, and as to those matters, I believe them to be true.

/s/ Carl Pillard
CARL PILLARD

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 4th day of June, 1971.

/s/ Edward J. Brown
Harry Treinin Notary Public
/s/ Dennis J. Brown

HARRY TREININ
ATTORNEY AT LAW
11 EAST MARKET ST.
CORNING, N. Y.

STATE OF NEW YORK)
) ss
COUNTY OF STEUBEN)

I, ROBERT ANDREWS, being first duly sworn, depose and say that I am one of the defendants in the above-entitled action and have knowledge of the facts stated in the foregoing Answer insofar as they relate to me; that I have read such Answer and know the contents thereof and the same is true, except as to the matters stated therein on information and belief, and as to those matters I believe them to be true.

/s/ Robert Andrews
ROBERT ANDREWS

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 10th day of June, 1971.

/s/ Edward J. Brown
~~Harry Freinin~~ Notary Public
EDWARD J BROWN

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK



---

CHARLES JAMES,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School; and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants

NOTICE OF MOTION

To: Jeremiah S. Gutman, Esq.
Burt Neuborne, Esq.
Harrop Freeman, Esq.
Herman Schwartz, Esq.
Attorneys for Plaintiff
Harry Treinin, Esq.

Attorney for Defendants

PLEASE TAKE NOTICE, that, upon the annexed affidavit of John P. Jehu and upon all the proceedings heretofore had herein, the undersigned moves this Court for an Order granting leave to EWALD B. NYQUIST, as Commissioner of Education of the State of New York, to file a brief amicus curiae in the above-entitled action.

Motion granted
Burt Neuborne, Esq.
June 21, 1971

John P. Jehu
Attorney for
EWALD B. NYQUIST, Commissioner
of Education of the State
of New York
Office and Post Office Address:
State Education Building
Albany, New York 12224
Telephone No. 474-6150

ROBERT D. STONE
Counsel and Deputy Commissioner
of Education for Legal Affairs
Office and Post Office Address:
State Education Building
Albany, New York 12224
Telephone No. 474-6400

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK



CHARLES JAMES,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School; and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)
SS
COUNTY OF ALBANY )

JOHN P. JEHU, being duly sworn, deposes and says:

1. That he is a member of the Bar of the State of New York, and of the Bars of the United States District Courts for the Northern, Southern and Eastern Districts of New York, the United States Court of Appeals for the Second Circuit and the United States Supreme Court, and has filed with this Court a certificate of the United States District Court for the Northern District of New York to the effect that he is a member in good standing of the Bar of that Court, in accordance with Rule 2 (b) of the Rules of this Court.

2. That this affidavit is made in support of a motion of Ewald B. Nyquist, as Commissioner of Education of the State of New York, for leave to file a brief amicus curiae in the above-entitled cause.

3. That under §310 of the New York State Education Law and its predecessor sections, the Commissioner of Education and his predecessors has and have had, since 1822, judicial powers over the New York State education system.

4. That Charles James, plaintiff herein, heretofore brought an appeal to the Commissioner of Education, pursuant to said §310 of the Education Law, from the action of the Board of Education of the Addison Central School District, defendants herein (Central School District No. 1 of the towns of Addison, Cameron, Rathbone, Tuscarora, Woodhull, Thurston, Erwin, Lindley and Canisteo, Steuben County), in which said appeal said plaintiff was represented by Levy, Gutman and Goldberg, Esqs., Jeremiah S. Gutman, Esq., of counsel, and in which said defendant was represented by Harry Treinin, Esq; that pleadings were filed and served, memoranda of law were submitted and an oral argument was held before the Commissioner, with Robert D. Stone, Esq., Counsel and Deputy Commissioner of Education for Legal Affairs, present, all in accordance with the Rules of Practice on Appeals, a copy of which is attached hereto and made a part hereof, as Appendix 1.

5. That on February 23, 1970, the said Commissioner of Education rendered his decision on said appeal, a copy of which said decision is attached hereto and made a part hereof, as Appendix 2.

6. That according to said §310 of the Education Law, judicial decisions of the Commissioner of Education rendered upon appeals pursuant to said section are "final and conclusive, and not subject to question or review in any place or court whatever."

7. That the Court of Appeals of the State of New York holds that such judicial decisions of the Commissioner of Education are subject to review only when they are "purely arbitrary" in the sense that no reasonable person could reach his conclusion on the record before him (Board of Education, etc. v. Allen, 6 NY

2d 127) and that in matters of educational policy, furthermore, such decisions are not subject to review at all (Vetere v. Allen, 15 NY 2d 259; see also Matter of Ocean Hill - Brownsville Governing Board, 23 NY 2d 483, 485).

8. That Judge Weinstein, of the United States District Court for the Eastern District of New York, in Taylor v. New York City Transit Authority, 309 F. Supp. 785, held that "No compelling Federal interest militates against according res adjudicata effect to the determinations of the [Commissioner of Education]." He further held that the State "provided an adequate means for the vindication of the plaintiff's constitutional interest. He could have sought direct review of the [Board of Education's] action in the state courts. Alternately, he had the opportunity to assert his constitutional claim before the [Commissioner]. In providing these options which plaintiff failed to exercise, the State afforded him due process of law, and the decisions of the state tribunals should now be accorded determinative effect."

9. That for all the foregoing reasons the Commissioner of Education has an important legal interest in the above-entitled cause, which is purely a matter of state educational policy and involves the educational interests of the State of New York for which New York State Law and Constitution makes the Commissioner of Education responsible, and consequently it is requested that this Court grant the said Commissioner leave to file a brief amicus curiae herein.

Sworn before me this 27th day of May, 1971.

J. Michael Eadry

J. MICHAEL EADRY, Notary Public
State of New York, Albany County

UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF NEW YORK

----------X

CHARLES JAMES,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY NEW YORK, EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School' and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants.

----------X

MOTION TO DISMISS and for JUDGMENT

The defendants move this Court as follows:-

1. To dismiss this action on the ground:-

(a) That the complaint does not allege jurisdiction because no substantial Federal question is alleged in the complaint.

(b) That the question presented is so insubstantial as not to constitute a Federal question.

(c) That the complaint fails to state a claim against the defendants upon which relief can be granted.

2. Defendants move the Court to enter judgment on the pleadings in favor of the defendants herein on the grounds that on the undisputed facts appearing from the pleadings, defendants are entitled to judgment as a matter of law.

3. Defendants move the Court to enter pursuant to Rule 56 of the Federal Rules of Civil Procedure a summary judgment in the defendants' favor dismissing the action on the grounds that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law.

The motions for summary judgment and judgment on the pleadings are based on the defenses set forth in the defendants answer.

Signed:

HARRY TREININ
Attorney for Defendants
Office and Post Office Address
11 East Market Street
Corning, New York 14830
Telephone AC 607 962-3167

To: Attorneys for Plaintiff

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for a hearing before this Court at the U.S. Court House in the City of Rochester, New York on the 13th day of September 1971 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed

HARRY TREININ
Attorney for the Defendants
Office and Post Office Address
11 East Market Street
Corning, New York 14830
Telephone AC 607 962-3167

To

John K. Adams Clerk
United States District Court
for the Western District of New York
United States Court House
Niagara Square
Buffalo, New York 14202

Herman Schwartz, Esq.
State University of New York at Buffalo
School of Law
77 West Eagle Street
Buffalo New York 14202

Jeremiah S. Gutman Esq.
Burt Neuborne, Esq.
New York Civil Liberties Union
84 Fifth Avenue
New York New York 10011

Harrop Freeman, Esq.
Cornell Law School
Ithaca, New York 14850

Robert D. Stone
Education Building
Albany New York

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK



- - - - - - - - - - - - - - - - - - - - - - - - - x

CHARLES J[illegible]S,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - x

AFFIDAVIT

State of New York )
County of Monroe ) ss.:

CHARLES JAMES, being duly sworn, deposes and says:

1. I am the plaintiff herein and I make this affidavit in support of my request for summary judgment and in opposition to defendants' motion for summary judgment.

2. On June 7, 1969, I was hired as an English teacher at Addison High School. I taught at Addison High School from the opening of school in September 1969, until my suspension on December 12, 1969. I was dismissed by Central Board No. 1 on January 13, 1970. During the three months I taught at Addi[illegible]on High School I never received any complaints or admonition in connection with my teaching duties. I believe that, except for the black armband incident described below, my teaching was completely

satisfactory to my superiors, colleagues and students.

3. I have always been a deeply religious man. I studied for the Methodist Pastorate at Mansfield State College and Colgate-Rochester Divinity School, served as a Chaplain's Assistant in the Korean War, served as a Methodist Minister from 1955-1963 and served on the World Peace Commission of the Methodist Church in 1956. During the mid-1960's, because of my deep pacifist views I became a member of the Religious Society of Friends (Quakers). After my wife and I moved to Steuben County, I became a member of the Elmira Meeting and participated regularly in its religious life.

4. During the Autumn of 1969, I became increasingly concerned with the wholesale loss of life engendered by the Vietnam War. As a pacifist and a Quaker my concern over the loss of life in Vietnam was not traceable merely to a political disagreement with our Nation's policies, but stemmed from my religious aversion to war in any form. My sense of deep religious distress at the loss of life in Vietnam was shared by the fellow members of the Elmira Meeting.

5. When November 14, 1969 was designated a day of mourning over the loss of life in Vietnam, the Elmira

Meeting determined to prepare black armbands, a traditional sign of mourning, and to wear the armbands to express our deep religious conviction that war is immoral and our sense of profound regret over the loss of life in Vietnam.

6. During the days preceding November 14, 1969, the black armbands were prepared at the Quaker Meeting House in Elmira. The preparation of the armbands was accompanied by discussion and prayer.

7. On November 14, 1969, I resolved to wear one of the black armbands as an expression of my religious aversion to war in any form and as a sign of my regret over the loss of life in Vietnam. Although I feared that my armband might provoke an occasional frown of disagreement from a colleague, I had no idea that it would precipitate my suspension and firing. I was certain that my students would either ignore my armband or recognize it as an expression of my personal grief. I had absolutely no intention to impose my religious or political beliefs upon any person. I have never attempted to indoctrinate or to proselytize any student; nor do I believe that any student was in any way offended by my armband.

6. Shortly after the opening of school on November 14, 1969 my Principal, Carl Pillard, entered my homeroom on routine business and noticed my armband, but left without discussing it with me. Mid-way through the second period, I was summoned from my class, which I had been teaching without incident, and ordered to report to Mr. Pillard's office. When I reported to Mr. Pillard's office, he asked me why I was wearing a black armband. I answered: "Because I am against killing." Mr. Pillard explained to me that if he permitted me to wear the armband parents and community members, who vote on the school budget, would become incensed. Mr. Pillard, thereupon, ordered me to remove the armband and, when I refused, ordered me to report to Edward J. Brown, the District Principal.

7. Mr. Brown, once again, asked me why I was wearing a black armband. Once again I answered: "Because I am against killing." Mr. Brown, thereupon, ordered me to remove the armband, stating that he considered it a political act. I attempted to explain that the armband was motivated, not merely by a political opposition to the war in Vietnam, but by my religious aversion to war in any form. When I persisted in refusing to remove my armband, Mr. Brown suspended me and ordered me to leave the premises immediately. I did so.

8. After leaving school, I was deeply distressed over the fact that I might be unable to support my wife and children if I were fired. I proceeded to the Quaker Meeting House in Elmira and participated in a prayer vigil seeking an end to all wars.

9. At no time on November 14, 1969, did my armband interfere with my normal teaching duties. I perceived no interference, or threat of interference, with the normal operation of Addison High School on November 14, 1969.

10. On Saturday, November 15, 1969, I received a communication from Central Board No. 1 confirming my suspension, but permitting me to return to work immediately, provided that I participate in no further "political" activity in school. Since my wearing of a sign of mourning for the dead in Vietnam had been motivated by overwhelmingly religious, as opposed to political considerations, I gratefully returned to work on November 17, 1969, hoping that the incident was closed.

11. On December 12, 1969, members of the Elmira Meeting resolved, once again, to wear black armbands as a sign of mourning for the dead in Vietnam. I assumed that we would probably continue to wear black armbands once a month until the killing stopped in Vietnam.

12. When Mr. Brown learned that I had worn a

black armband to school on December 12th, he immediately suspended me. I was formally notified of my dismissal on January 13, 1970. No hearing was held prior to my dismissal.

13. Since my dismissal, I have been unable to find work, although I have applied for teaching positions in every surrounding School District.

14. My appeal to the New York State Commissioner of Education was denied on September 23, 1970. I know of no further administrative remedies available to me.

15. I believe that my wearing of a black armband in no way interfered with the satisfactory performance of my teaching duties and was an expression of religious conscien which should not have precipitated my dismissal.

Charles James, Jr.

Sworn to before me this

27th day of September 1971.

TOBY JO PLATT
Notary Public, State of New York
No. [illegible]
Qualified in Queens County
Commission Expires March 30, 1972

# The Elmira Meeting of the Religious Society of Friends

Charles and Neva James are members of the Elmira Meeting of the Religious Society of Friends. Having come to us from the Flushing Meeting, they have regularly attended and supported the Elmira Meeting and are held in high esteem and affection by every Friend in our Society.

Our meeting worked with the Elmira Committee for Peace, which was composed of local church representatives - Methodist, Baptist, Greek Orthodox, Roman Catholic, and Unitarian - to formulate plans for observing the 1969 moratoriums. Activities rising from these plans provided the means for Charles James and many others to wear a black armband.

The Religious Society of Friends, known also as Quakers, has concerned itself since its founding with the futility and immorality of war. At the time of the restoration of the English King CharlesII in 1660, a "Declaration from the Harmless and Innocent People of God, called Quakers" reads:

> We utterly deny all outward wars and strife, and fightings with outward weapons, for any end, or under any pretence whatever; this is our testimony to the whole world. The spirit of Christ by which we are guided is not changeable, so as once to command us from a thing as evil and again to move unto it; and we certainly know and testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war against any man with outward weapons, neither for the kingdom of Christ nor for the kingdoms of this world.[1]

This conviction is based on our essential belief that there is that of God in every man, which has led us not only away from

1. The Quaker Story by Sidney Lucas, Harper Bros., pg.60.

war but into a genuine feeling of equality and brotherhood with all men everywhere.

> Since the working of the Inward Light led men into Truth by unusual ways, it was recognised by the Quaker that toleration of opinions other than those generally held was necessary if the spirit was not to be hindered. To be free to speak and act in accordance with the law of God was an essential of Christian progress. No law of the church or state was considered greater than this law.
>
> Perhaps the greatest contribution the Quaker made was his unflinching constancy in resisting the incursions of the state into the realm of conscience. When disobedience to the law was inevitable he stood his ground without evasion, resisting never with physical violence but with the power of rightiousness and the full force of his religious conviction.
>
> ...This Inward Light, this something of God in every man, was the center of Quakerism, the mainspring of action behind all the Testimonies, inspiring man's life and giving him faith and courage to withstand persecution.[2]

It still is today. A relevant quote from Faith and Practice, the Book of Discipline of the New York Yearly Meeting, adopted July 27, 1968, reads:

> No clear line can be drawn between "religious" and "secular" affairs. The service of God is found in the world. Accordingly, the Society of Friends has a deep concern for the welfare of the whole community and for every sector of it. Where there is tension, injustice, or conflict - between individuals, groups, or nations - Friends are called to carry on a ministry of reconciliation. This involves an intilligent caring for the dignity and welfare of all persons, and a love for the enemy and the unlovely, not merely for those who love us. This further involves a special caring for those whom the world neglects or exploits or condemns.[3]

2. Ibid, pgs 62-63.

3. Faith and Practice, The Book of Discipline of the New York Yearly Meeting of the Religious Society of Friends, 15 Rutherford Place, New York, N.Y., pg. 34.

It is from this religious context that Charles James drew his moral imperative to act as he did, in wearing a black armband - symbol of sympathy and mourning for the dead - on those days accepted nationally as the time to demonstrate for peace and for an end to the killing in Vietnam. His action was, as one member of this meeting, along with other members who chose out of the same deep convictions, to wear a black arm band all and every day of the moratoriums. Some of our members also joined in the Washington peace march or joined other members of the Elmira community in keeping a peace vigil in Wisner Park, or held our meeting house open for any one who wanted to come in and discuss the disturbing and divisive issues of the Vietnam War. The armband Charles James wore was one of many made at our meeting house and worn by our members into every walk of life we represent.

Some schools took advantage of this history-in-the-making event by discussing with their students the issues involved and the dynamics of the democratic process taking place in this dissent and peaceable demonstration. That the Addison school missed this opportunity was cause for regret. But their subsequent firing of a teacher for exercising his right silently to stand for what he believes shocked us into the realization that our fundamental liberties, even though protected by the bill of rights, still need our vigilance to keep them alive.

We are proud of the courage and integrity shown by this gentle man among us, and of his wife and children who have suffered along with him. We stand with them all the way, even as another

teacher in our midst sewed his armband to his sleeve and still wears it in protest against the persecution of his fellow teacher. But to our knowledge no other school or school board chose to suppress this expression of sympathy and mourning used by many teachers and others throughout the state and nation, most of whom were not Quakers but who believed in and acted on their right to stand, even in silence, and be counted.

We are deeply sorry that Charles James and his family have had to endure for all of us the deprivations, animosities, and suffering that should either have been none of ours or all of ours to share, since we acted similarly, based on the same religious convictions.

We present this Testimony of our full support of the actions of Charles James in wearing to school and in his classrooms a black armband; and we protest the intolerance which has been practiced against him in direct contradiction of his protections under the law of this good land.

The preceeding Testimony was written by Mary L. Dee and corrected and approved by a specially called business meeting of the Elmira Meeting of the Religious Society of Friends, December 13, 1970, and signed below by every member present. (All those members absent were: Jane Roberts, Charles James, and Neva James.)

Mary L. Dee
Wesner E. Salle
Thomas R Barrett
Edna S. Beyer
Lemuel K. Beyer
Budd Mitchell
Janet L. Schmitz
Muriel Chamberland
June B. Salle
Dorothy B. Anderson
Ellen S. Tifft
Cecil Gilliland

Genevieve T. Garland
Marjorie M. Hocker
James P Hocker
Donald Salle
Michelle Salle
Kay Garner

EDUCATION DEPARTMENT
STATE OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - X

In the Matter of the Application of :

CHARLES JAMES, :

Petitioner, :

for an Order pursuant to the Education law :

-against- :

THE SCHOOL BOARD OF ADDISON CENTRAL SCHOOL DISTRICT, :

Respondents, :

for an Order declaring that the petitioner be removed from suspension and returned to his full teaching duties. :

- - - - - - - - - - - - - - - - - - - - - - - - X

NOTICE:

You are hereby required to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the Rules Relating to Appeals Before the Commissioner of Education, copies of which are available from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12224.

If an answer is not served and filed in accordance with the provisions of such Rules, the statements contained in the petition will be deemed to be true statements and a decision will be rendered thereon by the Commissioner.

Please take notice that such Rules require that an answer to the petition must be served upon the petitioner,

STATE OF NEW YORK
EDUCATION DEPARTMENT

- - - -

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STATE OF NEW YORK

In the Matter of the Application of :

CHARLES JAMES, :

Petitioner, :

for an Order pursuant to the Education Law, :

-against- :

THE SCHOOL BOARD OF ADDISON CENTRAL SCHOOL DISTRICT, :

Respondents, :

for an Order declaring that the petitioner be removed from suspension and returned to his full teaching duties. :

The petitioner, CHARLES JAMES, herein respectfully shows and alleges:

1. I reside at 60E Grand Central Avenue, Town of Horseheads, ~~Tompkins~~ CHEMUNG County, State of New York and I am duly qualified, certified and licensed as a probationary teacher.

2. On November 14, 1969 I was serving as a probationary teacher in the Addison Central School District, Addison, New York for the academic year 1969-1970.

3. On Friday, November 14, 1969, I wore a black armband to school in observation of the Vietnam Moratorium.

4. On that same day, November 14, Mr. Carl Pillard, principal of the Addison Central High School, summoned me to his office and asked me to remove my armband.

after some discussion with him, at which time I expressed my belief in my right to continue to wear this armband, I indicated my intent to continue to wear the armband in continued observation of the Vietnam Moratorium.

5. I was then told to report to the office of Mr. Edward J. Brown, District Principal of Addison Central School District.

6. I was then told by Mr. Brown that the wearing of such armbands, as a symbolic expression of my views, was illegal. Mr. Brown also stated that the wearing of the armband "would tend to be disruptive and possibly encourage pupils to engage in disruptive demonstrations." He further stated that "possibly there would be divisive effects on teachers." (Press statement by Mr. Brown, appended as Exhibit A)

7. That at the conclusion of the discussion, Mr. Brown told me that I must remove the armband before returning to my teaching assignment. I refused, and was suspended.

8. My suspension took place immediately, in the middle of the school day, without any prior fair hearing or other manifestation of due process.

9. On Saturday, November 15, a press statement by Mr. Brown (appended) and a letter to me from the Board of Education dated November 15 (appended as Exhibit B) were hand delivered to me at my home.

10. The letter, signed by Mr. Robert H. Andrews, president of the Board, indicated that the Board had

conferred with counsel and "very thoroughly discussed the facts of your [my] situation." The letter went on to say that the Board had "unanimously confirmed" my suspension. All this occurred between Friday afternoon, November 14 and Saturday, November 15.

11. I received no notice of the charges against me, no advance notice of the Board's meeting at which my case was to be considered, no opportunity to contest the action taken against me, no right to be confronted by the evidence against me, no right to present evidence on my own behalf, no right to cross-examine hostile witnesses nor to call friendly ones, and no right to be represented by counsel, nor was I afforded any other means of presenting my position and views to the Board.

12. The letter from Mr. Anderson informed me that I could return to school on Monday, November 17 "with the understanding that you [I] engage in no political activities while in the school."

13. On November 15 a letter was sent to Mr. Brown on my behalf by the Tompkins County Chapter of the New York Civil Liberties Union. The letter contested my suspension as a violation of First Amendment rights guaranteed to me by the Constitution of the United States.

14. On Monday, November 17 I returned to school. Since the Moratorium observance for November was over, I was not wearing the armband.

15. On Friday, December 12, in observation of

the next Moratorium, I again wore a black armband to school. I was again immediately suspended, under the same circumstances and with the same lack of fundamental due process which characterized my suspension in November.

16. On January 13, 1970 I was permanently suspended from all teaching duties in the Addison Central School District.

17. Petitioner requests an opportunity for oral argument before the Commissioner of Education of the State of New York.

WHEREFORE, owing to the fact that Mr. Brown and the Addison Central School District School Board of Education haveacted arbitrarily and capriciously and in violation of petitioner's fundamental rights to due process of law in permanently suspending petitioner from his teaching obligations as of January 13, 1970, petitioner prays for the following temporary relief:

That the commissioner of Education of the State of New York immediately order the Addison Central School Board to reinstate petitioner to his position as a probationary teacher in the Addison Central High School pending final decision of this petition.

And as permanent relief, petitioner prays:

a. That the Commissioner of Education of the State of New York order petitioner permanently reinstated as a probationary teacher in Addison Central High School.

b. That the Commissioner further order that the Addison Central Board of Education shall not suspend

petitioner from his teaching position unless and until just cause is shown.

Or, as alternative permanent relief, petitioner prays:

a. That the Commissioner of Education of the State of New York order and conduct an immediate investigation of the arbitrary and capricious actions of the Addison Central School Board in suspending petitioner without a fair hearing (as has been recognized as applicable to probationary teachers by Decision No.8051 of the Commissioner of Education of New York, In the Matter of John Cousins, 1969) in denying all of petitioner's rights of due process and in direct opposition to the findings of the Supreme Court regarding the rights of teachers as well as students, to express their views through the symbolic, non-disruptive act of wearing of a black armband in Tinker v. Des Moines Independent Community School District 89S.Ct.733, 21 L.Ed.2d 731 (1969).

b. That petitioner be paid his regular salary for all lost time resulting from his arbitrary and unconstitutional suspension.

c. That petitioner be granted such other and further relief as the Commissioner may deem just.

Dated: February 5, 1970

CHARLES JAMES, Petitioner

Of Counsel:
JEREMIAH S. GUTMAN
LEVY, GUTMAN & GOLDBERG
363 Seventh Avenue
New York, N.Y. 10001
212-244-6670
c/o New York Civil Liberties Union

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

---

CHARLES JAMES,

Plaintiff

- vs -

CIVIL 1971-164

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants

---

Burt Neuborne, Jeremiah S. Gutman,
Herman Schwartz and Harrop Freeman
% New York Civil Liberties Union
84 Fifth Avenue
New York, N.Y. 10011
Attorneys for Plaintiff

Harry Treinin
11 East Market Street
Corning, N.Y. 14830
Attorney for Defendants

Commissioner of Education of New York
Amicus Curiae
Robert D. Stone and John P. Jehu
State Education Building
Albany, N.Y. 12224
(of counsel)

The defendants by their written motion filed August 20, 1971, move to dismiss the complaint upon grounds particularly stated therein, and for judgment on the pleadings; and for summary judgment in their favor. The plaintiff filed his affidavit sworn to September 27, 1971 in opposition. The matter came on for argument September 27, 1971. Upon due consideration summary judgment is hereby granted to the defendants as follows: It is hereby

ORDERED, ADJUDGED and DECREED as follows: The plaintiff appealed to the Commissioner of Education of the State of New York from the action of the Board of Education of Central School District No. 1 of the Towns of Addison, Cameron, Rathbone, Tuscarora, Woodhull, Thurston, Erwin, Lindley and Canisteo; Steuben County, relating to his dismissal. The Commissioner of Education by decision and order dated September 29, 1970, dismissed the appeal, holding in conclusion "Since the actions of the appellant were contrary to sound educational principles, and since those actions were not constitutionally protected in the circumstances of this appeal, the action of the

respondent in terminating appellant's probationary appointment must be sustained." The plaintiff did not appeal, as he had the right to do, but instead brought this action. The questions raised by the complaint in this action are res judicata. The plaintiff in wearing the black arm band in the classroom was effectively presenting only one side of an important political issue. In so doing he chose to ignore the expressed policy of the State Education Department calling for neutrality and objectivity in dealing with "Moratorium Days" on the part of teachers and administrators. These were days of intense political feeling on the question of the policy of the Administration in reference to its conduct of the Viet Nam War. His actions in this respect amounted to insubordination. His actions were not constitutionally protected. Plaintiff's dismissal did not violate his rights under the First Amendment of the Federal Constitution, nor any of his federally protected rights. He was not entitled to a hearing prior to his dismissal. The complaint is dismissed on the merits.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

December 22, 1971.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CHARLES JAMES,

Plaintiff,

-against-

NOTICE OF APPEAL

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTED; STEUBEN COUNTY, New York; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

CIVIL 1971-164

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - x

S I R S :

Notice is hereby given that Charles James, the plaintiff herein, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment entered in this action on the 23rd day of December granting summary judgment for the defendants and dismissing plaintiff's complaint.

Yours, etc.

Burt Neuborne
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(212) 924-7800

Dated: New York, New York
December 29 1971

To: Harry Treinin
11 East Market Street
Corning, New York 14830

Clerk of the Court
United States District Court
for the Western District of New York

DECISION OF UNITED STATES COURT OF APPEALS (FIRST APPEAL).

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 697—September Term, 1971.

(Argued May 5, 1972 Decided May 24, 1972.)

Docket No. 72-1109

CHARLES JAMES,

*Appellant,*

v.

THE BOARD OF EDUCATION OF CENTRAL DISTRICT No. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1, CARL PILLARD, Principal, Addison High School, and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

*Appellees.*

Before:

KAUFMAN, ANDERSON and MANSFIELD,

*Circuit Judges.*

Appeal from an order of Judge Harold P. Burke in the United States District Court for the Western District of New York summarily dismissing a high school teacher's complaint under 42 U.S.C. §1983, which alleged that school

officials violated his constitutional rights by discharging him because he had worn a black armband in class.

Reversed and remanded.

---

BURT NEUBORNE, New York, N.Y. (New York Civil Liberties Union, of counsel), *for Appellant.*

HARRY TREINEN, Corning, N.Y., *for Appellees.*

JOHN P. JEHU, Albany, N.Y., *for Commissioner of Education of the State of New York, Amicus Curiae.*

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KAUFMAN, *Circuit Judge:*

The first amendment proscription against any law abridging freedom of expression, perhaps more than any other constitutional guarantee, frequently brings into sharp focus the inexorable tension between enduring concerns for individual freedom and the authority required to preserve the democracy so crucial to realizing that freedom. For several decades, the courts have struggled with principles and concepts necessary to strike a functional balance between protected speech and the government's legitimate interest in protecting our democracy.[1]

The Supreme Court has more than once instructed that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton* v. *Tucker*, 364 U.S. 479, 487 (1960), *quoted in Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967); *Tinker* v. *Des Moines Independent Community*

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1 *See generally*, Kaufman, *The Medium, the Message and the First Amendment*, 45 N.Y.U.L. Rev. 761 (1970). (The James Madison Lecture.)

*School District*, 393 U.S. 503, 512 (1969). Rightly called the "cradle of our democracy," our schools bear the awesome responsibility of instilling and fostering early in our nation's youth the basic values which will guide them throughout their lives. Appellant is quick to agree that we cannot tolerate undisciplined, coercive, intimidating or disruptive activities on the part of teachers or students which threaten the essential functions of our schools, and that such conduct requires a disciplinary response. But, the issue in this case is whether, in assuming the role of judge and disciplinarian, a Board of Education may forbid a teacher to express a political opinion, however benign or noncoercive the manner of expression. We are asked to decide whether a Board of Education, without transgressing the first amendment, may discharge an 11th grade English teacher who did no more than wear a black armband in class in symbolic protest against the Vietnam War, although it is agreed that the armband did not disrupt classroom activities, and as far as we know did not have any influence on any students and did not engender protest from any student, teacher or parent. We hold that the Board may not take such action.

The facts essential to a resolution of the conflicting interests are undisputed. On June 7, 1969, Charles James was employed as an 11th grade English teacher at Addison High School, located near Elmira, New York. He previously had taught in the New York City public schools. After moving to the Elmira area, James, a practicing Quaker, joined the Elmira Meeting of the Religious Society of Friends.

When November 14 and December 12, 1969, were designated as "moratorium" days by the opponents of the Vietnam War, the Elmira Meeting determined to observe

the two days by wearing black armbands.[2] On November 14 James affixed one of the armbands, which had been prepared by the Meeting, to the sleeve of his jacket. He since has stated that he "resolved to wear one of the black armbands as an expression of [his] religious aversion to war in any form and as a sign of [his] regret over the loss of life in Vietnam."

Shortly after school began that day, Carl Pillard, the Principal, entered James's homeroom, noticed the armband, but made no comment. Pillard waited until midway through the second period when James was teaching poetry, apparently without any incident or discussion whatsoever relating to Vietnam or the armband, to summon James to his office and to request him to remove the armband. When James refused to remove it, Pillard sent him to the District Principal, Edward J. Brown. Brown ordered James to remove the armband or risk suspension or dismissal because the armband constituted a symbolic expression of his political views.[3] In addition, Brown

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2 In a statement signed after James had been dismissed, the members of the Elmira Meeting explained their motivation:

> It is from this religious context [Quaker belief in the futility and immorality of war] that Charles James drew his moral imperative to act as he did, in wearing a black armband—symbol of sympathy and mourning for the dead—on those days accepted nationally as the time to demonstrate for peace and for an end to the killing in Vietnam. His action was as one member of this meeting, along with other members, who chose out of the same deep convictions, to wear a black armband all and every day of the moratoriums.

3 Brown apparently assured James that there was no question as to his right to hold political views or to participate in political activities outside of school. Controversial issues, he said, should not be discussed in school unless they are relevant to the subject matter being taught and all points of view are objectively presented. He relied in part on a letter of November 3, 1969, from Herbert F. Johnson, Deputy Commissioner of the Department of Education of New York, which set forth the Department's policies with respect to the upcoming moratorium days: "The school posture should be neutral and objective. Administrators and

feared that "wearing the armband would tend to be disruptive and would possibly encourage pupils to engage in disruptive demonstrations." When James again refused to remove the armband, Brown summarily suspended him and ordered James to leave the school at once.

The following day James received a letter from the Board of Education of Central District No. 1, reinstating him on "the understanding that [he] engage in no political activities while in the school."[4] James resumed his teaching duties, but, steadfastly abiding by his principles, whether religious (Quakers are doctrinally opposed to war) or political in nature, he came to school wearing an armband on December 12, the second moratorium day. He was summarily suspended as soon as Brown learned that James again had worn an armband. Here, too, the record is barren of a scintilla of evidence indicating that there were any incidents or threats to school discipline, that any students or teachers had complained of or were offended by James's first or second symbolic protest, or

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staff members should avoid taking positions on controversial matters which may reflect on the objectivity of the school." In addition, Brown suggested that it was a breach of professional ethics to use the classroom to promote partisan politics. *See* New York State Teachers Ass'n, Joint Code of Ethics.

4 The letter in full read:

> The Board of Education of Addison Central School District has conferred with counsel and very thoroughly discussed the facts of your situation. The Board has, unanimously, confirmed the action of District Principal Edward J. Brown regarding your suspension on Friday, November 14, 1969.
>
> The Board deems your action to be a political act. As such, it is prohibited in the School. It is, also, deemed unethical action on the part of a teacher to engage in such activity.
>
> You may return to class on Monday, November 17, 1969, with the understanding that you engage in no political activities while in the School.
>
> Of course, the Board recognizes fully your absolute right to express outside of the School any beliefs that you may have.

that the armband constituted more than a silent expression of James's own feelings. On January 13, however, without affording James a hearing, the Board of Education of Central District No. 1 discharged him from his teaching position in accordance with § 3013(1) of the Education Law of New York.[5]

James appealed his dismissal to the New York State Commissioner of Education, Ewald B. Nyquist, asserting that his dismissal infringed upon his first amendment rights and deprived him of due process of law.[6] The "hearing" before the Commissioner, as we were informed at the argument of this appeal, was no more than an informal round-table discussion between the Commissioner, the parties and their attorneys. No transcript of the proceedings was made. On September 23, 1970, Commissioner Nyquist filed his decision. Although he recognized that a board of education does not have unfettered discretion to dismiss a probationary teacher,[7] he concluded that James had violated "sound educational principles" and that his actions "were not constitutionally protected."

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5 James, in his first year of teaching at Addison, was appointed as a "probationary" teacher. Under the provisions of § 3013(1) of the Education Law of New York, the services of a probationary teacher "may be discontinued at any time during such probationary period, upon the recommendation of the district superintendent, by a majority vote of the board of education or trustees."

6 *See* Education Law of New York § 310.

7 Commissioner Nyquist relied on his earlier decision in *Matter of Collins*, Decision No. 8051, August 26, 1969:

> While I fully agree that a board of education has broad powers over a probationary teacher and may dismiss a probationer without giving a reason, the exercise of these powers by a board must be made "within the ambit of the purpose for which they were granted and in a manner consistent with our basic Constitutional framework."

*See also Puentes* v. *Board of Education*, 24 N.Y. 2d 996 (1969), *rev'g* 24 A.D. 2d 628 (1965).

In addition, he reaffirmed the Board of Education's absolute right to dismiss a probationary teacher without affording the teacher a hearing or explaining the basis of the discharge.

Thereupon, James instituted this action in the Western District of New York against the Board of Education of Central District No. 1, Edward Brown, Carl Pillard and Robert Andrews, President of the School District Board of Trustees, alleging that his dismissal violated 42 U.S.C. §1983.[8] Judge Burke, in a brief memorandum, denied James's motion for summary judgment and granted the defendants' motion for a judgment, summarily dismissing the complaint on the merits, seemingly on two grounds: first, that the issues raised by the complaint were *res judicata*, and second, that none of James's federally protected rights was violated.[9]

## I.

At the outset we are presented with the contention that the claims asserted below are *res judicata*. We consider this to be wholly without merit. Appellees argue that James, at his own choosing, was given the full opportunity to litigate his claims before the Commissioner of Educa-

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8 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

James's complaint asserts violations of his rights to free speech, free exercise of religion, procedural due process and equal protection of the laws.

9 In this posture of the proceedings, we must accept all factual allegations in the complaint as true.

tion, a "judicial officer" of the State, and therefore that James should be bound by the Commissioner's decision. Judge Burke buttressed their position with a pointed reference to James's failure to appeal the Commissioner's decision to the New York courts.[10]

It is no longer open to dispute that a plaintiff with a claim for relief under the Civil Rights Act, 42 U.S.C. § 1983, is not required to exhaust state judicial remedies. *See, e.g., Monroe* v. *Pape*, 365 U.S. 167 (1961); *Rodriguez* v. *McGinnis*, —— F.2d ——, 1971 Slip Op. 1527 (2d Cir. Jan. 25, 1972) (*in banc*); *Sostre* v. *McGinnis*, 442 F.2d 178, 182 (2d Cir. 1971) (*in banc*), *cert. denied*, 404 U.S. 1049 (1972). It is still the law in this Circuit, however, that a Civil Rights plaintiff must exhaust state administrative remedies. *Eisen* v. *Eastman*, 421 F.2d 560 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970). It hardly can be suggested that a plaintiff having followed the course laid out by *Eisen*, was to be barred henceforth from pressing his claim to final judicial review or to be deprived of his opportunity to litigate his constitutional claims in the judicial forum of his choice. To adopt the full implication of appellees' argument would be to effect a judicial repeal of 42 U.S.C. § 1983 and strike down the Supreme Court's decision in *Monroe* v. *Pape*, *supra*. James would be placed in the paradoxical position of being barred from the federal courts if he had not exhausted administrative remedies and barred if he had.[11]

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10 Although § 310 of the Education Law of New York provides that any decision of the Commissioner "shall be final and conclusive, and not subject to question or review in any place or court whatever," New York courts have reviewed decisions where there is a claim that the decision was arbitrary or an abuse of discretion. *See, e.g., Board of Education* v. *Allen*, 6 N.Y. 2d 127 (1959).

11 Appellees' reliance on Judge Weinstein's opinion in *Taylor* v. *New York City Transit Authority*, 309 F.Supp. 785 (E.D.N.Y.), *aff'd*. 433 F.2d 665 (2d Cir. 1970), is misplaced. Judge Weinstein's determination that Taylor could not raise his procedural due process claim in the

## II.

We come now to the crucial issue we must decide—did the Board of Education infringe James's first amendment right to freedom of speech?[12]

Any meaningful discussion of a teacher's first amendment right to wear a black armband in a classroom as a symbolic protest against this nation's involvement in the Vietnam War must begin with a close examination of the case which dealt with this question as it applied to a student. *Tinker* v. *Des Moines Independent Community School District, supra.* Mary Beth Tinker, a junior high school student, her older brother and his friend, both high school students, were suspended from school for wearing black armbands in school to publicize their opposition to the war in Vietnam. Noting that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," 393 U.S. at 506, the Supreme Court held that a school cannot bar or penalize students' exercise of primary first amendment rights akin to "pure speech" without "a showing that the students' activities would materially and substantially disrupt the work and discipline of the school." *Id.* at 513.

With respect to both teacher and student, the responsibility of school authorities to maintain order and disci-

federal courts, after he had appealed his discharge as a Transit Authority employee to the New York City Civil Service Commission and then the New York courts, was based on Taylor's failure to raise that claim before the administrative agency. The decision was nothing more than a logical extension of *Eisen* v. *Eastman, supra,* through the application of traditional notions of merger and bar. Since no transcript of the proceedings before Commissioner Nyquist was made, James cannot be charged with the failure to raise any of his claims. Suffice it to say that appellees conceded at oral argument that the broad range of James's grievances were discussed informally before the Commissioner.

12 In view of our decision, it is unnecessary to reach the claims that the discharge violated his rights to free exercise of religion and equal protection of the laws.

pline in the schools remains the same. The ultimate goal of school officials is to insure that the discipline necessary to the proper functioning of the school is maintained among both teachers and students. Any limitation on the exercise of constitutional rights can be justified only by a conclusion, based upon reasonable inferences flowing from concrete facts and not abstractions, that the interests of discipline or sound education are materially and substantially jeopardized, whether the danger stems initially from the conduct of students or teachers. Although it is not unreasonable to assume that the views of a teacher occupying a position of authority may carry more influence with a student than would those of students *inter sese*, that assumption merely weighs upon the inferences which may be drawn. It does not relieve the school of the necessity to show a reasonable basis for its regulatory policies. As the Court has instructed in discussing the state's power to dismiss a teacher for engaging in conduct ordinarily protected by the first amendment: "The problem in any case is to arrive at a balance between the interest of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering* v. *Board of Education*, 391 U.S. 563, 568 (1968).[13]

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13 *Pickering* dealt with the power of the Board of Education to discharge a high school teacher for sending a letter to the local newspaper criticizing the Board and the district superintendent of schools for their fiscal policies. The Board insisted that the letter was disruptive of faculty discipline and would tend to foment "controversy, conflict and dissension" among teachers, administrators and residents of the district. The Court held that the Board had violated the teacher's first amendment rights. Appellees would distinguish *Pickering* by having us draw an arbitrary line between first amendment rights exercised in school and out of school. The distinction is deceptively simple and cannot withstand scrutiny. *See Goldwasser* v. *Brown*, 417 F.2d 1169 (D.C. Cir.), *cert. denied*, 397 U.S. 922 (1969) (*Pickering* test applies to teacher's

It is to be noted that in this case, the Board of Education has made no showing whatsoever at any stage of the proceedings that Charles James, by wearing a black armband, threatened to disrupt classroom activities or created any disruption in the school. Nor does the record demonstrate any facts "which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities . . . ." *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. at 514. All we can learn from the record is that in the opinion of Edward Brown, the District Principal, "wearing the armband would tend to be disruptive and would possibly encourage pupils to engage in disruptive demonstrations." "But," the Supreme Court warned in *Tinker*, "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."[14] *Id.* at 508.

Appellees urge us not to conclude that schools must wait until disruption is on the doorstep before they may take

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classroom speech at Air Force language school). Appellees concede, as they must, that James has a constitutional right to wear a black armband off school premises—every day if he so pleases. But, it is not unreasonable to assume that James, as a teacher, might gain notoriety for such out-of-school conduct and become a vanguard of the local opposition to the Vietnam War. In that event, one could not divorce his person from the idea, and he would become an embodiment of his symbolic protest no matter where or how he appeared—even if temporarily without his armband. Although we can imagine situations in which a teacher would be so controversial because of his tenets or beliefs that he would be a disruptive force in the school, no one would suggest that he could be dismissed merely because he was *identified* with a particular cause if he did not preach that cause in class.

14 The facts here call more clearly for the protection of James's rights than did those in *Tinker*. In his dissenting opinion in *Tinker*, Justice Black emphasized that "[e]ven a casual reading of the record shows that the armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker 'self-conscious' in attending school with his armband." 393 U.S. at 518. The record in this case does not support similar inferences.

protective action. We do not suggest this course, but if anything is clear from the tortuous development of the first amendment right, freedom of expression demands breathing room. To preserve the "marketplace of ideas" so essential to our system of democracy, we must be willing to assume the risk of argument and lawful disagreement. *Id.* at 508-09; *Terminiello* v. *Chicago*, 337 U.S. 1 (1949). This is entirely different, however, from saying that the school must await open rebellion, violence or extensive disruption before it acts. *Compare Burnside* v. *Byars*, 363 F.2d 744 (5th Cir. 1966), *with Blackwell* v. *Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966).[15]

## III.

That does not end our inquiry, however. The interest of the state in promoting the efficient operation of its schools extends beyond merely securing an orderly classroom. Although the pros and cons of progressive education are debated heatedly, a principal function of all elementary and secondary education is indoctrinative—whether it be to teach the ABC's or multiplication tables or to transmit the basic values of the community. "[S]ome measure of public regulation is inherent in the very provision of publice education." Note, *Developments in the Law-Academic Freedom*, 81 Harv. L. Rev. 1045, 1053 (1968). Accordingly, courts consistently have affirmed that curriculum controls belong to the political process and local school authorities.

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15 In *Burnside* v. *Byars*, the Fifth Circuit ordered that school authorities be enjoined from enforcing a regulation against wearing freedom buttons when there was no evidence of disruption. The same panel of the Fifth Circuit on the same day in *Issaquena* upheld a similar regulation in another school because students wearing the buttons had attempted to force unwilling students to wear the buttons. When the offending students were ordered to remove their buttons and cease distributing them in school, they engaged in disruptive activities.

"Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate constitutional values." *Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968).[16]

Appellees argue that this broad power extends to controlling a teacher's speech in public schools, that "assumptions of the 'free marketplace of ideas' on which freedom of speech rests do not apply to school-aged children, especially in the classroom where the word of the teacher may carry great authority." Note, *Developments in the Law-Academic Freedom*, 81 Harv. L. Rev. at 1053. Certainly there must be some restraints because the students are a "captive" group. But to state the proposition without qualification is to uncover its fallacy. More than a decade of Supreme Court precedent leaves no doubt that we cannot countenance school authorities arbitrarily censoring a teacher's speech merely because they do not agree with the teacher's political philosophies or leanings. This is particularly so when that speech does not interfere in any way with the teacher's obligations to teach, is not coercive and does not arbitrarily inculcate doctrinaire views in the minds of the students. *Cf. Keyishian* v. *Board of Regents, supra.*

As we have indicated, there is merit to appellees' argument that *Tinker* does not control this case, because a teacher may have a far more pervasive influence over a student than would one student over another. Although sound discussions of ideas are the beams and buttresses of the first amendment, teachers cannot be allowed to patrol

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16 Even in this area there are constitutional limitations. In *Epperson*, for example, the Court held that a state could not prevent a high school biology teacher from teaching students about Darwin's theory of evolution because the regulation would be an establishment of religion in violation of the first amendment. Nor can a state prevent the teaching of modern foreign languages under the guise of promoting "civic development." *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).

the precincts of radical thought with the unrelenting goal of indoctrination, a goal compatible with totalitarianism and not democracy. When a teacher is only content if he persuades his students that his values and only his values ought to be their values, then it is not unreasonable to expect the state to protect impressionable children from such dogmatism. But, just as clearly, those charged with overseeing the day-to-day interchange between teacher and student must exercise that degree of restraint necessary to protect first amendment rights. The question we must ask in every first amendment case is whether the regulatory policy is drawn as narrowly as possible to achieve the social interests that justify it, or whether it exceeds permissible bounds by unduly restricting protected speech to an extent "greater than is essential to the furtherance of" those interests. *See United States* v. *O'Brien*, 391 U.S. 367, 377 (1968). Thus, when a teacher presents a colorable claim that school authorities have infringed on his first amendment rights and arbitrarily transgressed on these transcendent values, school authorities must demonstrate a reasonable basis for concluding that the teacher's conduct threatens to impair their legitimate interests in regulating the school curriculum. What we require, then, is only that rules formulated by school officials be reasonably related to the needs of the educational process and that any disciplinary action taken pursuant to those rules have a basis in fact.

Several factors present here compel the conclusion that the Board of Education arbitrarily and unjustifiably discharged James for wearing the black armband.[17] Clearly,

17 In light of our holding, we find it unnecessary to decide whether the Board of Education violated James's due process rights by not affording him an evidentiary hearing before he was dismissed. *Compare Eoth* v. *Board of Regents*, 446 F.2d 806 (7th Cir.), *cert. granted*, 404 U.S. 909 (1971), *and Sindermann* v. *Perry*, 430 F.2d 939 (5th Cir. 1970), *cert. granted*, 404 U.S. 917 (1971) (a probationary teacher has a right to

there was no attempt by James to proselytize his students.[18] It does not appear from the record that any student believed the armband to be anything more than a benign symbolic expression of the teacher's personal views. Moreover, we cannot ignore the fact that James was teaching 11th grade (high school) English. His students were approximately 16 or 17 years of age, thus more mature than those junior high school students in *Tinker*.

Recently, this country enfranchised 18-year-olds.[19] It would be foolhardy to shield our children from political debate and issues until the eve of their first venture into the voting booth. Schools must play a central role in preparing their students to think and analyze and to recognize the demagogue. Under the circumstances present here, there was a greater danger that the school, by power of example, would appear to the students to be sanctioning the very "pall of orthodoxy," condemned in *Keyishian*, which chokes freedom of dissent.[20]

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a hearing when he has a colorable claim that his dismissal violates the first amendment), *with Parker* v. *Board of Education*, 348 F.2d 464 (4th Cir. 1965) (a probationary teacher has no constitutional right to a hearing when his contract is not renewed). *See also Drown* v. *Portsmouth School District*, 435 F.2d 1182, 1188 (1st Cir. 1970), *cert. denied*, 402 U.S. 972 (1971), *Orr* v. *Trinter*, 444 F.2d 128, 135 (6th Cir. 1971), *petition for cert. filed*, 40 U.S.L.W. 3126 (Aug. 18, 1971); *Shirck* v. *Thomas*, 447 F.2d 1025, 1026 (7th Cir. 1971), *petition for cert. filed*, 40 U.S.L.W. 3321 (Dec. 3, 1971), 40 U.S.L.W. 3375 (Jan. 21, 1972); Note, 85 Harv. L. Rev. 1327 (1972). The Supreme Court has heard argument in both *Roth* and *Sindermann*, and its decision may well be dispositive of this issue.

18 Appellees argue that James's political activity was unacceptable in the classroom because the armband was "the projection of an idea . . . it asks no comments in return and it invites no discussion." This fact alone cannot condemn a protected medium of expression.

19 Eighteen-year-olds, in addition, are now eligible to serve on federal juries. Pub. L. No. 92-269 (Apr. 6, 1972).

20 *See Hanover* v. *Northrup*, 325 F. Supp. 170 (D. Conn. 1970) (violation of 1st amendment rights to dismiss a junior high school teacher

Finally, James was first removed from class while he was teaching poetry. There is no suggestion whatsoever that his armband interfered with his teaching functions, or, for that matter, that his teaching ever had been deficient in any respect.[21]

IV.

We emphasize that we do not question the broad discretion of local school authorities in setting classroom standards, nor do we question their expertise in evaluating the effects of classroom conduct in light of the special characteristics of the school environment. The federal courts, however, cannot allow unfettered discretion to violate fundamental constitutional rights.[22] Professor Jaffe put it aptly in an analogous area of the federal courts' review power: ". . . expertness is not a magic wand which can be indiscriminately waved over the corpus of an agency's findings to preserve them from review." L. Jaffe, Judicial

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who refused to lead her class in the Salute to the Flag because she believed the phrase "with liberty and justice for all" was an untrue statement).

21 Appellees rely extensively on *Goldwasser* v. *Brown*, *supra*, which is clearly inapposite. Goldwasser, a civilian, was employed as a language instructor in the Air Force Language School to teach English to foreign military officers. After repeated warnings against discussing controversial subjects during class hours, he was discharged for antiwar statements and comments about anti-Semitism in America. In upholding the dismissal in the face of a first amendment challenge, the court relied on findings that his conduct interfered with the proper performance of his duties because he unduly sacrificed classroom teaching hours. 417 F.2d at 1176-77.

22 The Supreme Court decision in *Tinker* instructs that the federal courts must not accept unquestioningly the school authorities' judgment as to the effects of classroom conduct or speech. *See*, Note, *The Supreme Court, 1968 Term*, 83 Harv. L. Rev. 7, 158 (1969): "By not deferring to the administrative expertise of school officials, *Tinker* imposes new limitations on the power of the state to restrain students from speech or conduct which would clearly be protected by the first amendment if engaged in by adults."

Control of Administrative Action 613 (1965). We cannot abdicate our responsibility to form our own conclusions when, having thoroughly searched the record, we find no sound constitutional basis for the Board's or the Commissioner's conclusions.

The dangers of unrestrained discretion are readily apparent. Under the guise of beneficent concern for the welfare of school children, school authorities, albeit unwittingly, might permit prejudices of the community to prevail. It is in such a situation that the will of the transient majority can prove devastating to freedom of expression. Indeed, James has alleged in his complaint that another teacher, "without incurring any disciplinary sanction, prominently displayed the slogan 'Peace with Honor' on a bulletin board in his classroom." This slogan has been associated with our foreign policy. If the allegation is true, and we must assume that it is in light of the summary dismissal of the complaint, it exemplifies the concern we have expressed. The Board's actions under such circumstances would indicate that its regulation against political activity in the classroom may be no more than the fulcrum to censor only that expression with which it disagrees. *See Tinker* v. *Des Moines Independent Community School District*, 393 U.S. at 510-511 (petitioners were barred from wearing black armbands, but other students were allowed to wear political campaign buttons and the Iron Cross, a traditional symbol of Nazism). By requiring the Board of Education to justify its actions when there is a colorable claim of deprivation of first amendment rights, we establish a prophylactic procedure that automatically tempers abuse of properly vested discretion.

It is characteristic of resolutions of first amendment cases, where the price of freedom of expression is so high and the horizons of conflict between countervailing interests seemingly infinite, that they do not yield simplistic formulas

or handy scales for weighing competing values. "The best one can hope for is to discern lines of analysis and advance formulations sufficient to bridge past decisions with new facts. One must be satisfied with such present solutions and cannot expect a clear view of the terrain beyond the periphery of the immediate case." *Eisner* v. *Stamford Board of Education*, 440 F.2d 803, 804 n. 1 (2d Cir. 1971).

It is appropriate, however, lest our decision today (which is based on the total absence of any facts justifying the Board of Education's actions) be misunderstood, that we disclaim any intent to condone partisan political activities in the public schools which reasonably may be expected to interfere with the educational process.

Accordingly, we conclude that the district court erred. The judgment of the district court is reversed and the case remanded for proceedings not inconsistent with this opinion.

OPINION OF CURTIN, J., DATED AUGUST 11, 1972.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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CHARLES JAMES,

Plaintiff

-vs- Civil 1971-164

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO; STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central District No. 1; CARL PILLARD, Principal, Addison High School; and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1,

Defendants

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APPEARANCES: Burt Neuborne, Esq.
New York Civil Liberties Union
84 5th Avenue
New York, New York 10011
For the Plaintiff.

Harry Treinen, Esq.
11 East Market Street
Corning, New York 14830
For the Defendants.

Relying upon the mandate of the Court of Appeals in Docket No. 72-1109 (May 24, 1972), the plaintiff moves for an order directing the defendants to reinstate the plaintiff as a teacher at Addison High School

for the 1972-1973 school year forthwith pending the final disposition of this matter.

This case was originally heard before Judge Harold P. Burke. The instant motion is brought before me because Judge Burke is away during the month of August and the plaintiff contends that, unless he is reinstated in time for the school year commencing in September, he will not be reinstated for yet another year. It should be noted that the plaintiff has been unable to find regular employment in the Elmira area as a teacher since the defendants terminated his employment on January 13, 1970.

The defendants oppose the motion and have filed affidavits supporting their opposition. They contend that, if the plaintiff is reinstated, another teacher will lose her job and that the educational process would be disrupted if the plaintiff is reinstated and then terminated upon the action being determined against him.

Although counsel for the defendants argues that issues of fact remain, he was unable to specify at oral

argument what those issues are. None of the affidavits before Judge Burke reveals any disputed factual issues. Both sides moved for summary judgment before Judge Burke, who granted summary judgment in favor of the defendants. As stated by the Court of Appeals, "[t]he facts essential to a resolution of the conflicting interests are undisputed." Slip opinion at 3229. In addition, "the record is barren of a scintilla of evidence indicating that there were any incidents or threats to school discipline, that any students or teachers complained of or were offended by James's first or second protest, or that the armband constituted more than a silent expression of James's own feeling." Id. at 3242.

The court considers the plaintiff's motion as an application for preliminary injunctive relief. Because the facts discussed above disclose "probable success on the merits and some irreparable injury," Inmates of Attica Correctional Facility v. Rockefeller, 453 F.2d 12, 20 (2d Cir. 1971), such relief is appropriate.

It is therefore hereby ordered that the defendants reinstate the plaintiff as a teacher of English at

Addison High School for the 1972-1973 school year forthwith pending the final disposition of this action.

The court will not entertain an application for a stay of this order.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: August 11, 1972

EXAMINATION BEFORE TRIAL HELD ON MARCH 26, 1973.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

CHARLES JAMES

Plaintiff

vs

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 OF THE TOWNS OF ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School, and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1.

Defendant

Examination Before Trial
March 26, 1973
Corning, New York

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IT IS HEREBY STIPULATED by and between the parties that testimony should be signed, however need not be filed, it is further

STIPULATED that oath of Notary Public be waived and administration of oath be done by Harry Treinin, Notary Public, and further that all objections except as to form be reserved to time of trial.

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CARL PILLARD being duly sworn testified as follows:
Questioned by Burt Neuborne, Esq.

Q Mr. Pillard could we have your name, address and your occupation?

A Carl H. Pillard, 47 Tuscarora, Street, Addison, New York.

Q And what is your current occupation?

A I'm the High School Principal.

Q How long have you been high school Principal?

A This is my 7th year I believe.

Q Could you describe generally the duties of the Addison High School Principal?

A Yes, to oversee the running and functioning of the school, the classes are all run properly and take care of any problems that come, disciplinary problems as such.

Q To whom do you report?

A Mr. Ed Brown.

Q And do you supervise the teachers at Addison High School?

A Yes.

Q Is that one of your duties?

A Yes.

Q What was your occupation before Principal of the

Addison High School?

A I was a classroom teacher.

Q Where was that?

A Elmira, New York, Morrisville, New York, Nichols, New York.

Q What subjects did you teach?

A Mathematics and Physical Education.

Q On the High School level?

A Yes, high school.

Q What's your educational background?

A I graduated from the University of Buffalo, I have my Masters from Ithaca College.

Q What's your Masters in, Education?

A Yes.

Q How many years did you teach, is this your first supervisory position at Addison?

A Yes.

Q How many years did you teach prior to that?

A 13.

Q I take it you have State Certification?

A Yes.

Q When was the first time that you noticed Mr. James on

November 12, 1969?

A Well to the best of my knowledge it seems to me before 9 o'clock in the morning.

Q Could you tell us what happened?

A I was told by someone and I can't recall who it was that Mr. James was wearing an arm band.

Q Can you recall whether it was a student or teacher?

A No I can't.

Q Can you recall the circumstances under which you were told?

A No.

Q Can you recall whether the person was complaining or simply notifying you of this fact?

A No I can't.

Q Then what did you do?

A Then I went to Mr. Brown's office and informed him of this and he told me to have him remove it.

Q Exactly what did you say to Mr. Brown. Let me say for the Record this is four years and if someone asked me I would have a great deal of trouble remembering, to the best of your recollection?

A To the best of my recollection I said I was told Mr.

James was wearing an arm band.

Q At this time you hadn't actually seen Mr. James?

A No.

Q Do you remember whether you told who told you that Mr. James was wearing the arm band?

A No I don't remember.

Q How long did this conversation with Mr. Brown take?

A Probably a minute or less.

Q Did you tell him anything else during that time?

A No.

Q And again to the best of your recollection what did Mr. Brown say?

A He told me to have him remove it, it was a political action against the President.

Q Approximately how long did Mr. Brown speak to you, again during this one minute time frame?

A Yes.

Q Where did the conversation take place?

A In his office.

Q Was anyone else present?

A Not that I can recall.

Q And this was before school actually had begun?

A Well it depends what you consider..

Q Were the students all in school at the time?

A I believe they were.

Q Had attendance been taken yet? When is attendance taken at home room?

A Home room probably twenty minutes of 9.

Q Just for the record can you explain how it works, from the school system?

A Well the students are allowed in at twenty minutes after eight at which time home room begins and then approximately twenty minutes of nine there's a five minute period devoted to taking attendance and making announcements and at 8:45 pass to the first class.

Q Approximately what time did you have this conversation with the person that told you about Mr. James, sometime before nine was it?

A Yes.

Q And sometime after the students had come into school?

A I don't recall.

Q Could it have been earlier?

A It might have been 8:20.

Q What time did your conversation with Mr. Brown take

place?

A Sometime between eight and nine o'clock.

Q Fair enough. After Mr. Brown suggested to you that you have Mr. James remove the arm band what did you do then?

A To the best of my knowledge, I can't tell exactly, I undoubtedly went up to observe if he did have an arm band.

Q Do you remember actually doing this?

A I don't recall exactly.

Q I understand it was four years ago and it's hard. Did you have a conversation with Mr. James?

A Yes I did.

Q About when?

A Well as best I can recall seems to me about nine o'clock.

Q What class was Mr. James involved at that time?

A I seem to recall English 11.

Q An acedemic class?

A Right.

Q Did you go into the classroom or call him out?

A I don't remember.

Q Do you recall how you got word to him you wanted to see him?

A No.

Q During the time.... Do you remember how much time elapsed between the time Mr. Brown spoke to you and you spoke to Mr. James?

A Again to the best of my recollection it seems to me like I went directly up to his room.

Q Did you observe him teaching?

A That particular time?

Q Yes?

A No, I wouldn't have gone then, it would have been....

Q No I guess I used a technical word. When you went up to talk to him did you see him teaching his class?

A I don't recall.

Q Where did you have this conversation with him?

A In my office.

Q And you don't recall I take it whether you went in and asked him to come to your office or sent somebody?

A No I don't remember.

Q Do you know who if any body was supervising his class while he was gone?

A No but I probably would have made some arrangement, usually you do but as I say I don't recall.

Q You don't have any memorandum of that?

A No.

Q I take it then you don't recall that you made any special arrangements to cover Mr. James?

A No.

Q What transpired when you had this conversation then with Mr. James?

A Well he came in, we began talking and again to the best of my recollection I asked why he was wearing the arm band and h said he was against killing. And I said to him that I considered it a political act against the President of the United States.

Q Was that in keeping with what Mr. Brown had suggested that you tell Mr. James?

A Yes and my own feeling too and then we discussed that for a while.

Q How long did that conversation take place?

A Five to ten minutes at the very most.

Q And this took place in your office?

A Yes.

Q Were you interrupted during your conversation with Mr. James by any reports in any way?

A Not that I recall no.

Q Was anyone else present during your conversation with Mr. James?

A No.

Q What did Mr. James... The whole conversation lasted five to ten minutes is that your recollection?

A Yes.

Q Apart from the fact you believed it to be a political act what other reason if any did you give to Mr. James?

A Well actually that was the basic reason. We did talk for a while again I'm trying to recall, he told me they had had a meeting with the Quaker Religion either last night or the night before and they had prepared these bands as a sign of mourning against killing. We talked for a little while longer and then he asked if he could have some time to think it over about removing the band and I said no.

Q Why did you say no?

A Well I felt if he felt that sincere I couldn't understand why he needed three hours, he was either for it or he was against it.

Q Did you tell him what might happen if he didn't?

A Sometime during the conversation I did say to him

I might be hearing from every parent in the school district.

Q Can you think back and try to remember precisely what you did say concerning the possibility of hearing from the parents?

A As close as I can recall I probably would be hearing from every parent in the school district.

Q Yes?

A In oposition to his wearing an arm band?

Q Had you received any comments from parents prior to that date?

A I wouldn't have prior to it no.

Q What other reason if any did you give to Mr. James during this brief conversation?

A None that I can recall.

Q So actually to say the two reasons,which were given at this conversation were one, that you felt it was a political act and 2, you might receive a large number of complaints from parents in the community?

A Basically the main reason was the first one, if I said the other statement it just came during the conversation as an aside.

Q Had Mr. Brown mentioned to you that as a possibility?

A No.

Q At the time that you had this conversation with Mr. James, strike that. What did Mr. James finally say to you at the end of the conversation?

A He thought for a few minutes, I guess debating whether to remove the arm band or not, after a few seconds he said He wasn't going to.

Q What did you say to him?

A I told him to go see Mr. Brown.

Q About what time, this would have been about 9:30?

A Again my best recollection it would be about 9:10.

Q What arrangements did you make for the coverage of Mr. James' class while he went to see Mr. Brown?

A I don't recall, I may have even gone up to sit with the students.

Q Do you remember what you did in this instance?

A No.

Q Is it possible that no arrangements were made to cover?

A I suppose it's possible.

Q Did you have any other contact with Mr. James on November 12?

A Do you mean verbally or did I see him?

Q Either?

A I don't recall.

Q Do you recall who took Mr. James' c[illegible]s for the remainder of the day?

A No

Q Do you recall whether any substitute was appointed?

A I don't recall but I'm sure one was called in.

Q Is it possible that one was not?

Mr. Treinin: Well I'm going to object on this, it's not relative to the issues of the case. We are interested in what happened with Mr. James.

Q Subject to Mr. Treinin's objection is it possible that a substitute was not called in for the day?

A Very highly improbable.

Q Would your records indicate who was called in if in fact a substitute was called in?

A They would.

Q Did you have any conversation with Mr. Brown on November 12 concerning Mr. James after the first conversation did you have any subsequent conversations?

A After Mr. James' conversation?

Q Yes?

A I don't recall.

Q Did any person on November 12 discuss with you Mr. James having worn the arm band to school?

A I don't remember, you mean any person at anytime during the day?

Q Any teacher, any student?

A I don't recall.

Q Did you receive any complaints from any student that day concerning Mr. James' wearing the arm band?

A To the best of my knowledge no.

Q Did you experience any abnormal disciplinary problems with the student body?

A Not that I can recall.

Q When is the next time that you discussed Mr. James wearing an arm band with any person?

A I don't recall.

Q There did come a time that you did discuss Mr. James wearing an arm band with someone?

A I'm sure I probably did.

Q When is the next time you can remember having done it?

A I can't remember any specific time.

Q You never had a conversation with Mr. Brown?

A I didn't say I never did, you asked me when, I don't

remember when.

Q Between November and December of 1969 did you have a conversation with Mr. Brown? Between November 12, and December 14, prior to December 14, 1969, November 14 and December 12, 1969 did you have a conversation with Mr. Brown concerning Mr. James wearing an arm band?

A Again it's conjecture on my part, I probably did.

Q Had you observed Mr. James teaching prior to November 14, 1969?

A No.

Q Had anybody observed....

Mr. Treinin: I object to any question as to a question that happened before the date of this occasion. That's not purview of this hearing.

Q For the Record I note your objection but I think we're entitled to know whether competency....

Mr. Treinin: We are not raising a question of competency, I don't think it's relative.

Q Fine as long as we understand.

Mr. Treinin: Those are not within the issues. I'm not saying he's competent or incompetent.

Q As I understand your answer Mr. Treinin, you would

raise some factual questions...

Mr. Treinin: I think you alleged that and I don't recall what my answer to you alleged..

Q As long as that aspect is not going to become a major issue?

Mr. Treinin: Of course not, we are interested in whether it was a proper time to wear an arm band under the circumstances.

Q Did you make a report to the Board of Education concerning Mr. James' activities on November 14th?

A No I did not.

Q Did you make a report to Mr. Brown?

A No.

Q Did you make a memorandum for your own files concerning November 12th?

A I don't recall having done so.

Q To the best of your recollection do you have in your possession any written material relating to Mr. James' activities on November 14, 1969?

A That I made?

Q Yes?

A No.

Q What about written material that other persons made?

A Just any communication Mr. Brown would have had with the Board of Education.

Q You did get copies of that?

A Yes.

Q What communication were they?

A Seems that there was a letter informing them of the incident on Friday.

Q Did the Board meet?

A Yes.

Q Were you present at the Meeting?

A Yes.

Q When did that meeting occur?

A To the best of my recollection it was the next day.

Q It would have been on Saturday?

A Saturday.

Q Who was present to the best of your recollection, I know it was four years ago?

Mr. Treinin: I will say this, the minutes are available.

Q Can I see the minutes?

Mr. Treinin: Of course, Let the Record show that the minutes of November 15th are made available to Mr. Neuborne.

Q Were you present during the entire meeting?

A To the best of my recollection.

Q Have you seen the minutes, why don't you take a look at them so you get refreshed as well as I do.

Does the second paragraph actually reflect the persons present to the best of your recollection?

A To the best of my recollection.

Q I take it Mr. James was not present?

A To the best of my recollection.

Q Do you recall whether any written material was presented to the Board in connection with the discussion that day?

A No I don't.

Q I note that the meeting lasted about two and a half hours, was any other item on the agenda except Mr. James's incident?

A I don't recall.

Q You don't recall that anything else was discussed?

A Right.

Q Did you address the Board at all?

A I don't recall, other than they may have asked me questions.

Q Do you recall making any oral statment to the Board?

A No.

Q Did Mr. Brown address the Board?

A I don't recall but I would imagine he did.

Q How about Mr. Treinin, Did Mr. Treinin address the Board?

A I don't remember.

Q I take it no attorney was there representing Mr. James?

A To the best of my knowledge there wasn't.

Q What do you recall Mr. Brown saying to tne Board?

A I don't recall anything Mr. Brown said.

Q It said after discussion the Administration agrees that action taken was proper.

A I don't recall anything specifically because I felt this was being taken down by the Clerk.

Q Mr. Treinin this is the full minutes of the meeting?

Mr. Treinin: If you desire we will make available a statement presented by Mr. Brown to the Board.

Q Do you recall frankly, do you recall anything about what the Board said that day?

A No, not in particular.

Q You don't recall why did they say that they were in agreement that administrative action taken was proper, what

prompted them to say that?

A They must have felt the same way.

Q You don't have an independent recollection of what any member of the Board said that day?

A No.

Q The 4th paragraph mentioned a letter be composed for the signature of the Board President to be personally delivered to Mr. James at his home. What was that letter all about, what was the purpose of that letter?

A I don't recall.

Q Did you have anything to do with the composition of that letter?

A No.

Q When did you next see Mr. James, do you recall did he return to school on the following Monday?

A To the best of my recollection yes.

Q Did you have any conversation with him at that time?

A I don't recall any.

Q Did he resume teaching?

A Yes.

Q Did you receive any complaints concerning his teaching from the date he returned on November 17 through December 14th?

A I don't recall any.

Q Did you observe his teaching during that period?

A Not to the best of my knowledge.

Q Do you know whether anybody else did?

A I wouldn't know.

Q Did you have any conversation with Mr. James's students during this period concerning his teaching?

A No I don't recall.

Q Did you receive any communications from any students concerning Mr. James's wearing an arm band on November 14th?

A Again I don't recall having received any.

Q How about comments from any parents?

A If there were I don't recall them now.

Q Were the events of November 14th widely publicized in the local press?

Mr. Treinin: Well I object to that as calling for a conclusion. What was widely publicized or local press.

Q Was it in the newspaper around here at all?

A Yes it was.

Q It was reported. I call your attention to December 12, 1969 when was the first time you noticed Mr. James that day?

A I don't recall, it was early, you mean time wise?

Q Yes?

A Seems to me shorlty after 8 o'clock.

Q Before school would have begun?

A I don't recall exactly, it's possible.

Q And what were the circumstances you did, you noticed him?

A I don't recall, I just remember having seen the arm band.

Q Do you remember where he was, in the classroom, in the corridor?

A I can't recall.

Q Inside or outside?

A I can't say.

Q Do you remember whether someone told you or you noticed him yourself?

A My best recollection would be I saw it myself.

Q Had you had any conversation with Mr. Brown concerning Mr. James on the previous day?

Mr. Treinin: Previous day meaning Sunday?

Q Previous school day. Were you told to be on the look-Out for Mr. James at all?

A Not that I can recall, the 12th was on a Tuesday wasn't it?

Mr. Treinin: I don't know.

Q Did you know that the 12th was a Moratorium Day?

A Yes.

Q And you recall Mr. James had worn an arm band the previous Moratorium Day?

A Yes.

Q Did you make any special attempt to ascertain whether he was wearing an arm band?

A I don't remember whether I made any special attempt.

Q What were you doing?

A To the best of my recollection again I told him to see Mr. Brown.

Q Did you have a conversation with Mr. Brown prior to telling him this?

A I don't recall any.

Q Do you recall whether he was in the classroom when you told him to see Mr. Brown or before dass had begun?

A I don't remember.

Q Had you had any conversation with anyone before you told him to see Mr. Brown?

A Again to the best of my recollection no.

Q How long did the exchange take?

A Just a few seconds.

Q Did you experience any disciplinary problems concerning the students on December 12, 1969?

A Not that I recall.

Mr. Treinin: I'm sorry, you're asking on December 12th, at what time, we were talking about 8 in the morning.

Q Anytime during the day?

A Not that I recall.

Mr. Treinin: I see.

Q How about the previous week?

A Not that I recall.

Q One of your functions I take it is to deal with disciplinar problems in the high school is that right?

A Yes.

Q Did you make any reports to the Board of Education concerning Mr. James's activities on December 12?

A No.

Q Did you have any conversation with Mr. James subsequent to the first previous conversation with him on December 12?

A Not that I can recall.

Q Were you present when Mr. James had his conversation with Mr. Brown?

A No.

Q Was anyone else present when you told Mr. James to go see Mr. Brown?

A Not that I can recall.

Q Do you recall whether arrangements were made to cover Mr. James's class on December 12, 1969?

A I can't remember specifically but I'm sure they were.

Q Again your records would reflect any substitute?

A Yes.

Q Was there a second meeting of the Board of Education called to discuss the James's matter after December 12, 1969?

A I don't remember but I imagine there was.

Q Were you present then?

A Again I don't remember but probably was.

Q Was it your decision to instruct Mr. James to remove the arm band on either December 14th or November 12th, or were you just following orders?

A Following orders.

Q Who's orders were you following?

A Mr. Brown's.

Q Have you noted whether any teacher at Addison High School with a particular religious preference wore a

religious ornament such as a crucifix?

A What was the first?

Q Have you noted whether any teacher at Addison High School has ever worn a crucifix?

A No.

Q You've never seen a teacher wear a crucifix around her neck?

A I don't recall any specific occasion, I may have.

Q What would you do if you saw a teacher wear a crucifix?

Mr. Treinin: I object, we're going far afield.

Q We have in the Record when Mr. James wore an ornament on his arm he was asked to remove it, I would like to know what Mr. Pillard would do if a teacher worn a religious crucifix?

Mr. Treinin: We are not talking about a specific case. What he would do is speculation, so I object to it.

Q Object to that at the trial, what would you do?

A Probably nothing.

Q Do you know whether any teacher at Addison ever displayed any slogans on the blackboard for example, 'Peace with Honor' or some such?

A No.

Q It's never been brought to your attention?

A No.

Q Do you know whether teachers in surrounding schools, only if you know, wore black arm bands to school on either of the two occasions?

Mr. Treinin: I object to that.

Mr. Neuborne: Yes?

Mr. Treinin: On....'

Mr. Neuborne: On relevance? Objection noted and again admissibility will be determined at trial.

A Do I know, no.

Q Just for the Record what grade was Mr. James teaching at this time, what was his class load, do you recall?

A I don't recall but he taught 11th grade English.

Q And the students he would have come in contact were in the 11th grade?

A Yes.

Q How old are those students?

A 17 give or take a year, 16, 17.

Q Some as old as 18?

A Possibly yes.

Q Apart from wearing his arm band do you know of any other activity that Mr. James on either November 14 or

December 12 engaged in that might have lead to his suspension?

A No.

Q Now when Mr. James was suspended for the second time on December 12 do you recall the point and time at which the next school board meeting was held?

Mr. Treinin: We are offering you the minutes.

Q Could you, that would refresh everybody's recollection then we could go forth with that. Mr. Pillard, the December 17th meeting, by that time Mr. James had been suspended is that right?

A I believe he was.

Q Do you recall whether he was getting paid, was he suspended with pay or without?

A I don't recall.

Q Would the Record reflect whether he would be receiving pay or not?

A I don't know, that's Mr. Brown's problem.

Q And do those minutes accurately reflect that Mr. James was not present at the December 17th meeting?

A Yes.

Q I see the meeting lasted approximately 40 minutes, do you recall whether Mr. Brown address the Board during that period?

A I don't recall specifically.

Q You were present during the entire meeting were you not?

A Yes.

Q Do you recall the matter of any of the discussion after having looked at the minutes?

A I remember the people being there.

Q About how many people were there?

A Seems to me 12 to 15.

Q Was the meeting orderly?

A Yes.

Q Of the 12 to 15 people there how many spoke?

A I seem to recall about three.

Q Were there any students present?

Mr. Treinin: Students of what institution?

Q Of the Addision High School?

A I don't recall.

Q You don't recall them being present or don't recall?

A They being present.

Q Do you recall whether there was any discussion concerning a hearing prior to Mr. James's suspension?

A I don't recall specifically. Do you mean during the Meeting was there, I believe there was.

Q Could you try to recollect what that discussion was?

A Well I remember that there was some communication between Mr. James and Mr. Andrews, Board President.

Q This was the December 17th meeting or January 15th meeting, you're free to rummage through this if you like. At the December 17th meeting do you recall whether there was any question concerning a hearing for Mr. James prior to suspension?

A I seem to recall there was some mention made that he was given the opportunity but....

Q Specifically do you recall the sentence on page 159, "Attorney Treinin remarked any meeting would not be for hearing but for reference to comments Mr. James wished to make", do you remember that statement being made?

A No I don't recall it specifically.

Q Do you recall whether any discussion was made about serving Mr. James with any formal notice or setting up any formal process , do you recall whether any Attorney representing Mr. James was present at the December 17th meeting?

A I don't recall.

Q Were the discussions of the School Board unanimous?

Mr. Treinin: I object.

Q That may not be admissible, were the discussions unanimous?

A To the best of my recollection yes.

Q What about the Board Meeting on, I guess on Saturday, was the Board Meeting unanimous?

A To the best of my recollection yes.

Q Subsequent to the December 17th meeting, what was the understanding concerning Mr. James's standing, what was your understanding what he could do, was he on the payrole, was he not, could he come in to teach?

A It was my understanding that he was suspended.

Q What did you understand itwould be necessary for Mr. James to do if anything to repeal that suspension?

A December12th, I don't recall anything he had to do.

Q If he had gone to you and promised he wouldn't wear the arm band any more would you reinstate him?

A That wouldn't be up to me to decide.

Q But, unless some approved action were taken by Mr. James, he was to remain suspended after the December 17th meeting?

A Yes.

Q Now Mr. Pillard I take it that you have read the

opinion of the Second Circuit, the Appeals Court Decision?

A Yes.

Q I would like if I may to go through some portions and you tell me whether actually it does or does not reflect the facts that surrounded the circumstance?

A I don't know if I read this one quite recently.

Q I have a copy here and I want your thought, you can take as much time as you like.

A Incidently before I forget when you earlier asked me about whether this was my first supervisory position I said yes, I forgot I was Assistant Principal in Elmira for one summer.

Q I will read you a quote from the Second Circuit, "We are asked to decide whether a Board of Education, without transgressing the first amendment, may discharge an 11th grade English teacher who did no more than wear a black armband in class in symbolic protest against the Vietnam War,". Did Mr. James do anything more than wear a Black armband in class?

A No, not to my knowledge?

Q "Although it is agreed that the armband did not disrupt classroom activities,"....

Mr. Treinin: Just a minute, when you say disrupt classroom activities, are you discussing physical activities?

Q You can cross-examine, I request you not interrupt my questioning.

Mr. Treinin: Let's specify.

Q I'm reading from the Second Circuit Court of Appeals, was there any physical disruption?

A Not to my knowledge, no.

Q Any other interruption that you want to comment on now that Mr. Treinin made his point?

A You mean during Mr. James's presence?

Q Yes and thereafter word?

A Other than the students lost the teaching that he would have given them.

Q Again going to the Second Circuit Court of Appeals and reading from the opinion, "and as far as we know did not have any influence on any students and did not engender protest from any student, teacher or parent.". Do you have any evidence that Mr. James wearing the armband had any influence on any student that would engender protest?

A Not that I'm aware.

Q Any students complain to you about it?

A I don't recall any.

Q Any parents complain about the effect on the students, on their children?

A I recall having discussed it with one person.

Q Do you know specifically did it have any effect on the children?

A No.

Q And it did not engender protest from any student?

A Not that I recall.

Q From any teacher?

A I can't recall any.

Q Or parent, apart from this one conversation with a parent were there any others?

A If there were I can't recall.

Q Tell us about the one conversation you did have with a parent, by the way was it a parent of one of the students in Mr. James's class?

A Yes. Just, I recall, he felt Mr. James shouldn't have worn the armband in class because he might have been an influencing factor in the student's thinking.

Q As far as you know did the armband hinder Mr. James's carrying out his teaching duties as an English teacher?

A No.

Q Continuing on with another section of the opinion and this deals with December 12th when Mr. James worn the armband again the second time, "Here, too, the record is barren of a scintilla of evidence indicating that there were any incidents or threats to school discipline,". Did Mr. James's wearing of the armband on the 12th of December, were there any evidence indicating that would constitute a threat to school discipline?

A There wasn't any evidence.

Q "that any students or teachers had complained of or were offended by James's first or second symbolic protest," Any students or teachers complain? Do you want to simplify what you said earlier?

A No.

Q "or that the armband constituted more than a silent expression of James's own feelings." Did the armband constitute anything more than that?

A Not at the time.

Q Thank you Mr. Pillard, that's all I have.

Mr. Neuborne: Let the Record indicate that there was a brief recess of between four to five minutes..

Mr. Treinin: Or two to three....

Mr. Neuborne: between the end of Mr. Pillard's testimony and the commencement of Mr. Treinin's examination and during that recess Mr. Treinin conferred with Mr. Brown and Mr. Pillard.

Questioned by Mr. Treinin; Esq.

Q Now Mr. Neuborne quoted to you sections of the Decision and referring to the section of disruption and asked you questions about disruption of the classroom activity and your answer there was no. Now what kind of disruption are you referring to?

A Physical.

Q And also he asked again whether or not there was any threat to school discipline and what kind of discipline are you referring to?

A Physical.

Q In anyway were you discussing the educational process of mind going to mind?

A No.

Q You took it that that sort of disruption was not of the educational process?

A I didn't have that in mind when he asked that.

Questioned by Mr. Neuborne, Esq.

Q As I understand on direct you testified it didn't effect

Mr. James in teaching English, it didn't prevent him from teaching 11th grade English Class, that's what I understand your testimony to be, but you tell me, how the arm band would have effected teaching of his English Class?

A The way I felt about it, the students visibly could see this black arm band which is an expression of Mr. James' and supplies one view point and I felt that the students should have the opportunity to all view points from both sides.

Q How would that make it more difficult for Mr. James to teach English?

A I don't know if it would make it more difficult to teach English but I'm sure the students were impressed in someway by seeing the black armband.

Q Apart from that type of disruption, if it can be called disruption, was there anything else that would justify in your opinion telling Mr. James he couldn't wear the arm band?

A You mean as far as what took place in the classroom? No, other than what I said, the students were given only one impression when they saw that black armband.

Q Did any other teacher in school wear a black arm band that day?

A Not to my knowledge. You mean in my particular school, no.

Q How about anywhere else in the vacinity?

A There was one in the Elimentary on which day I don't know.

Q Either the 14th or 12th?

A I'm not sure which day or whether it was on one of those days or previous.

Q What action was taken if you know?

A She was asked to remove it and she did.

Q Thank you Mr. Pillard.

EDWARD BROWN being duly sworn testified as follows:
Questioned by Burt Neuborne, Esq.

Q Mr. Brown may we have your name and address and current occupation for the Record please?

A Edward J. Brown, 87 Goodhue Street, Addison, New York, occupation; District Prinicpal.

Q Could you explain for me for the Record what the organization of the school district is so we know what the lines of authority are and who reports to whom?

A This is a Central School District. The District Principal is Chief School Officer so he reports to the Board of Education and receives authority from the Board of Education. This is somewhat complicated by the fact there is

also a District Superintendent.

Q Could you explain your relation?

A The District Superintendent has to be, he can give or make responsibility but in relation to this in recruitment he has to approve and recommend all teachers. I make my recommendations / to him and he in turn makes / recommendations to the Board and also he's involved in termination of the teacher in the same manor. I make recommendation to him and he makes recommendation to the Board of Education. That's an over simplification between the two. The law in this regard is very complicated as I understand it. But the District Superintendent does have authority that exceed that of District Principal.

Q Right now who is the District Superintendent?

A A fellow by the name of Dr. Richard McDonald. Back at the time of this incident it was N. Francis Miller.

Q Was Mr. Miller involved in the decision to recommend Mr. James's suspension?

A Yes he was, Before the December meeting or January Meeting between the two meetings and the January Meeting Mr. Miller was involved.

Q Can you detail for us in what way he was involved?

A He made recommendations to the Board of Education for termination of service.

Q Did he make it in writing?

A Yes he did.

Q That's the cover letter, do you have the recommendation?

A No I don't, I don't believe I have that, it would be in the Clerk's file I would assume.

Mr. Treinin: I think at this time you should make a statement as to the state of our records.

Q Did you have flooding?

A Yes and you will see some of these have been submerged, our records were in a real bad state and all the records in the Central Administration Office, anything in the file cabinets. We made a real effort to salvage, anything we didn't get to immediately as soon as it started drying out they stuck together and they couldn't be separated, they were in a bad state. I have a feeling that if we don't have a copy of that letter that I'm sure they would have it in the file of the District Superintendent.

Q Could we make an effort to get that letter. Where is Mr. Miller now?

A He's retired.

Q Does he live in the area?

A His home address is Canisteo, whether he's there now, he was planning on some traveling.

Q Did you discuss the matter with Mr. Miller prior to making the recommendation?

A Yes I did.

Q On how many occasions?

A I can recall one occasion specifically.

Q When was that?

A It was in between the December meeting of the Board and the January meeting of the Board.

Q Did you discuss it at all prior to Mr. James's wearing the arm band the second time?

A I believe I had in an informal conversation, I don't recollect specifically the details of the conversation.

Q Was there any written recommendations between you?

A Not that I recall.

Q What was the substance of your informal conversation during this time?

A I think during the conversation I related to him the incident that had taken place . I believe I reviewed with him my recommendation to the Board of Education relatin

what had taken place and generally discussed the principles involved.

Q Was he in general agreement with your position?

A I believe he was. I have a letter which I received, I will get the thinking on that too. I had received a letter which indicated to me that he was in general agreement with the way we handled the situation. Right now I'm having trouble finding it.

Q As I say I will be going through it so I will be on the look out for that letter. When was the first time on November 14, 1969 thatyou were apprised of the fact Mr. James was wearing an arm band?

A Some time in the early hours of the morning, I never made a notation of the exact time. I'm in general agreement of Mr. Pillard's recollection of the timing on it.

Q And it was Mr. Pillard who brought it to your attention the first time?

A Yes he was.

Q Do you recall testimony concerning a brief conversation he had with you, is that generally agreed?

A Yes, I would add I did instruct him to remove the arm band and if he didn't do so he was to send him to me.

Q In between the time Mr. Pillard left the office to deliver that message to Mr. James, did any other person speak to you concerning Mr. James?

A I don't recall any other conversation.

Q By the way is your office in the Addison High School?

A Yes at the rear of the building.

Q And were you in your office during the period?

A Yes.

Q Do you recall what time Mr. James came, I take it there did come a time when Mr. James came to your office?

A Yes I would say sometime in the neighborhood of 9:15 9:20, to the best of my recollection, as I said I made no notes on the time.

Q How was he dressed, was he wearing a tie?

A Shirt and tie and jacket.

Q And on the sleeve of his jacket he had a black arm band. I take it unadorned, a simple black arm band, no writing on it?

A Not that I recall.

Q Was anyone present in the office with you when Mr. James came in to have his conversation?

A No.

Q About how long did this last?

A To the best of my recollection between a half and three-quarters of an hour.

Q And what did you say? By the way do you have notes of the conversation?

A Well I would have to stand on my written documentation rather than rely completely on memory.

Q I take it I can see those notes?

A Yes, I'm more oriented toward more detailed note taking

Q Relying on the notes you have before you, can you reconstruct as best you can the conversation?

A I will relate this because I'm not confident in this.

Q Sure.

A When Mr. James arrived at my office we discussed our respective positions regarding whether or not he as a teacher had a right to wear a black arm band.

Q What did you say to him and he to you about your respective positions. I would like the contents of the conversation? What you said to him about your position concerning his right to wear an arm band? Do you have any individual recollections?

A I do feel confident in what I have written here.

Q You don't have over and above that/individual recollectic an

A Just smatterings.

Q Drawing on that can you remember the substance of what you said to Mr. James and Mr. James said to you about a teacher wearing a black arm band?

A I explained it was my opinion it was a political activity and as such unethical to use the school as a forum to express his personal views either symbolically or vocally.

Q What did Mr. James say to you?

A I can't remember sequentially his comments, the fact he was opposed to killing and the black arm band was being worn to symbolize this.

Q Did you know Mr. James was a Quaker?

A He informed me he had joined a group.

Q A Quaker group, you knew that?

A Yes he explained that.

Q Did he also explain to you that the arm bands were made by that Quaker group.

A Yes he did.

Q You nevertheless considered it a political act he was engaged in?

A Yes.

Q Why?

A Because he connected it as I did with Moratorium taking place.

Q Can you have a religious aversion to war?

A I assume so.

Q What lead you to believe Mr. James wasn't adverse to the war?

A I believe during conversation he indicated that he planned on going to washington to become....

Q What made you believe he was.., suppose it was religion as opposed to politics?

A I have the same feeling about imposing religion on pupils as I would politics.

Q Have you ever seen a teacher wear a crucifix to school?

A No incident stands out in my mind.

Q How long have you been an educator?

A About twenty years.

Q You don't remember ever seeing a teacher wear a crucifix at school?

A No specific incident.

Q Why is that less of an impression than wearing a

Quaker armband?

A Seeing a crucifix or emblem of that sort would mean nothing other than they belonged to a particular religion or paternal group. It would have no political implication.

Q I take it despite the fact you knew it was an armband made by a Quaker group and the Quakers were wearing them, Mr. James.... Did Mr. James discuss his religious motives at all?

A Yes to the extent that he explained how he happened to be wearing it as a result of this meeting . We had a fairly lengthy conversation.

Q You couldn't extract political from religious?

A As far as I was concerned the political was involved.

Q Just to save time so we won't have to go over the same ground, am I correct the evidence concerning the physical disruption, is that agreed from Mr. Pillard's testimony?

A I think agreed from his point of view.

Q Go ahead?

A From my point of view I believe there were after the incident some indication, speculation that disruption was present.

Mr. Treinin: Are you speaking of physical disruption?

Q Let's separate it out.

A I feel it's very important. Physically the only evidence of anything happening was on the same morning later in the morning, I was doing more traveling around the high school building, I did find a number of signs put up by pupils, peace symbols, a couple of vulgarities.

Q You removed them?

A I removed them.

Q Where were they put up?

A On the walls in the corridor. And frankly I didn't think an awful lot of it.

Q Why did you remove them, don't you think the students have a right to put up signs if they want?

A Under controlled situations.

Q Do they have to have your permission?

A Yes.

Q Is that right?

A There's conditions under which some physical instructions on where they are placed and so forth.

Q How about distribution of newspapers or hand bills?

A We have never had that problem.

Q Is there a procedure to giving permission to distribute.

Do you permit distribution of hand bills without your permission? I take it you would get a request? Do you permit this distribution without asking your permission first?

A I would have to speculate, I assume if it was going to create a problem I would put instruction on it.

Q Did you feel signs up in the corridor might create a problem?

A I believe they might have. From the very simple fact they were stuck to painted walls with scotch tape. We have a rule, we don't put them up.

Q Apart from that what other problems would they cause?

A I don't know, I didn't leave them there to find out. They were unsightly.

Q How many signs were there?

A Three or four.

Q Apart from three or four signs what other incidents did you see that lead you to believe there might be some disruption?

A Physical?

Q Yes? Classes proceeded normal that day?

A Yes.

Q No disciplinary problems?

A Not that I was aware of.

Q Let's go back to your conversation with Mr. James which lasted about a half hour or forty-five minutes, I take it the conversation ended with you insisting he remove his arm band?

A Yes.

Q And in your affidavit as I recall in the District Court you mentioned you felt it might tend to provoke a disturbance?

A Yes.

Q Is that a physical disturbance?

A Both.

Q Tell me what evidence you have that might tend to provoke a physical disturbance?

A I believe the pupils may be watching the activities on various college.....

Q You just had a generalized feeling?

Mr. Treinin: Don't put the words of the Supreme Court in his mouth.

Q What I'm trying to relate to is/the Tinker case. I'm not trying to trap you.

A I will try to give you an honest answer.

Q What certain occasion in your school lead you to believe if Mr. James wore a black armband there was a threat of physical disruption?

A None.

Q Let's get to this other kind of disruption. What's the other type?

A I think disruption of the orderly educational process that the whole matter of what's proper in terms of dealing with a controversial issue in the classroom. There is a code of ethics, one in which I have been guided for a number of years, I felt most teachers have been. When introducing a controversial topic in the classroom you do it in a professional way, you present all sides of the argument you allow free discussion.

Q Do you have any evidence that Mr. James would not have encouraged free discussion of the incident in his classroom?

A By his own comment, he said he did not.

Q What comment was that?

A The comment that he made in the conversation with me was he had not discussed the armband with the pupils, he indicated that.

Q Did you indicate he should and tell them it was his personal view and they were free to disagree at will?

A I believe I discussed that with him.

Q Did you ever discuss as an alternative to firing him that he tell the class that it was his personal expression at which they were at liberty to disagree and he certainly was not going to force it on them?

A No I did not. I suggested there were ways he could deal with my request in order for him to still support his principles.

Q In the Second Circuit opinion Commissioner Nyquist turned down James's original petition. He said James's had violated "sound educational principles", do I understand under physical disruption this is what you previsioned?

A I believe so, by the way Commissioner Nyquist wasn't putting words in my mouth.

Q I did not suggest he was, I'm trying to get to the nub of the issue. And I take it solely because you believe that the wearing of the armband violates "sound educational principles" and interrupted the "educational process" that you acted as you did in this case?

A I think that but I did think it was this type of

uncontrolled behavior or unpressured behavior that would lead to physical disruption of the educational process.

Q And you believed that all this prescribbed on the colle campuses.

A Yes and at the high school.

Q What others?

A There were some in the papers, reports of demonstr-tions and disruption.

Q Where?

A I didn't remember specifically, but I got the impression down in the White Planes area.

Q Anything around here?

A to the best of my recollection, no.

Q Do you remember anything about the circumstances surrounding the circumstances?

A Only vaguely.

Q What do you remember?

A I don't remember specifically, I think world peace.

Q Specifically what do you remember about this type of activity that made you think it might lead to physical disruption?

A I think I would have to say again it was a general

impression I had from the things I read at the time, that's a long time ago Sir.

Q Again paralleling Mr. Pillard's testimony just to save time, did you receive complaints from students about this?

A No.

Q How about from parents?

A Let's get the time, on the day of November 14th?

Q The 12th, anytime, you give me a chronological list?

A I couldn't give you that. I can make available to you any of the correspondence that I received that I still have that wasn't lost because of the flood. I will make available correspondence from parents and other interested people.

Q How many parents got in touch with you, parents of students in James's class by the way or can't you remember?

A I don't remember.

Q More than 5?

A I received quite a large number.of letters and I don;t remember how many or if any were from parents of the children that Mr. James had.

Q Did you keep all the letters you received?

A As I say , if they weren't flooded.

Q Did they all express one view point?

A No, parents, well I would say for and against, possibly the situation would be the other way, although I would say most of that was from outside the school district.

Q How about comments from other teachers?

A I had at the time, the morning of the incident I had no conversations with other teachers but events following that I had several conversations and did receive comments from th Addision Teacher's Association.

Q What comments did you receive from the Addison Teachers Association, can I see it?

A This is a copy of the letter to the President of the Board.

Q Make that an Exhibit. Did any teacher state that they would refuse to teach with Mr. James?

A No.

Q After your conversation with Mr. James when he left the school on the 14th of November, did you prepare any written summary?

A Yes I did.

Q Well you can make that available?

Mr. Treinin: Did you want to make that part of the Exhibit?

Mr. Neuborne: No I don't think so, if you want to.

Mr. Treinin: I will do it then. I just want it known this is a matter of record, this is in the file and wasn't concocted.

Q When did you make that?

A On the same day, the 15th day.

Mr. Treinin: Saturday morning.

Q Next did you meet with the Board of Education?

A Yes.

Q Did you prepare a second written summary or is that...?

A This is a copy of that and each Board member was provided with a copy.

Q Was Mr. James invited to be present at the November 15th Board meeting?

A Not to my knowledge or recollection.

Q Does your memo reflect that this was in fact a Quaker armband and Mr. James had discussed religion with you?

A No I made a general statement.

Q Did you verbally discuss it was a Quaker armband with the Board?

A I have a feeling I did, but I can't recall specifically of which of the meetings.

Q But the minutes reflect a conclusory summary of the meeting, I am sure they don't say everything that you said. Any person representing Mr. James present at the November 15th meeting?

A No.

Q During the interium, during the period from November 14th through December 12th, going over Mr. Pillard's testimony, ground Mr. Pillard went over, were there any other incidents involving Mr. James prior to his wearing the black armband for the second time?

A Not that I recall, I assume any incident that reflected on this incident.

Q Any incident that would have brought Mr. James to your attention?

A I was conscious of him being there.

Q Were you conscious of him performing his duties in a normal manor without actually calling attention to him unduly?

A I believe so if I understand your term of normal.

Q When did you first learn on the 14th of December,

he was wearing a black armband?

A I observed him entering the building.

Q At about what time?

A It would have been sometime after 8.

Q But before?

A But before 8:20 I'm certain.

Q Did you just happen to bump into him or specifically look for him?

A I was in the High School Principal's secretary's office and I happened to look out the window just at the time he was arriving.

Q Had you had any conversation with him in the days preceeding? I take it you knew there was going to be a second Moratorium Day? Did you have any conversation with him that he would be wearing the armband?

A I made the assumption he was not.

Q When you noticed he was wearing the armband what did you do?

A I don't remember specifically.

Q Did you comment on it to any person?

A At this minute, I can't recall whether I spoke to Mr. Pillard or not, or just specifically if I said I

didn't, I have a feeling I did, but can't recall specifically.

Q When next did you speak to Mr. James?

A At my office.

Q Who sent him?

A Mr. Pillard.

Q Do you know under what circumstances Mr. Pillard contacted Mr. James in the school at that time?

A No I don't.

Q How long did you converse with Mr. James on the second incident, the 12th of December?

A It would be about 15, 20 minutes to my recollection.

Q Do you have notes to that as well?

A I don't have specific notes on what took place.

Q By the way what prompted you to prepare notes of the first conversation you had with Mr. James?

A What prompted me, because I had taken action which would have to come to the attention of the Board of Education and this was my means of reporting that to the Board.

Q Did you discuss the matter with Mr. Miller?

A No I did not.

Q But you didn't prepare a detailed minute of the second one?

A I don't believe I did.

Q Did you expect you were going to make a report of that to the Board?

A I believe I did, I don't recall that was in writing.

Q Without the benefit of your notes can you reconstruct the context of the conversation you had with Mr. James on the 14th of December?

A I believe, if my, to the best of my recollection I made reference of the letter that had been sent to Mr. James from the President of the Board of Education and asked him if he felt that he was in non-compliance with the instructions in that letter. I believe I also asked questions surrounding what his understanding of that letter was.

Q What was his answer?

A The best I can recall he indicated he didn't feel wearing an armband was a political action therefore he didn't feel it was unethical.

Q Did you convey that to the Board, his feeling that wearing the armband was not a political action?

A I don't recall that I did or didn't.

Q What else took place during the conversation?

A As I recall I tried to convey to him, to convince him

one of the alternatives he had was to comply with my request to remove the armband and I still stand on the believe he was doing this politically.

Q He wouldn't be able to wear it during that Moratorium Day would he?

A That's right.

Q Again just to parallel Mr. Pillard's testimony, the event that we talked about concerning physical disruption or making physical disruption, would that also be accurate on the 12th, there was no complaint , in fact no physical disruption?

A No complaints of disruption, physical.

Q And no up--surge of disciplinary problems in the school? And no complaints from the students regarding Mr. James wearing an armband?

A Not that I recall.

Q If there's something you want to add to, teachers and parents on the 12th, well if there is feel free?

A I would have to rely on the letters which I received.

Q The letters really reflected comments on both, not just the 14th or 12th?

A Right and I was involved in conversation with people.

that I came in contact with over town.

Q Did you ever consider giving Mr. James a hearing to whic. formal charges would be placed and he would report?

A It was my understanding any wasn't required.

Q Did he have a contract with you?

A No we don't have contracts.

Q He didn't have any piece of paper?

A We have a salary agreement, I don't have one with me, because they knew that was lost, I'm sure Mr. James has his copy.

Q Mr. James did sign a piece of paper concerning salary and the piece of paper was September through June, 1970?

A With notice for salary through this period and he signed his acknowledgment?

Q Would you agree that the signing automatically by a teacher in the Addison High School System indicated an expectation they would remain?

A Any agreement during a probationary period, I believe th. probationers understand, they realize/can be terminated at any stage during the probationary period.

Q I don't necessarily mean permanent, would you agree ordinarily when a teacher's salary agreement is signed the teacher has the expectation he's going to remain permanent

until June?

A There's other incidents of teachers being terminated during the first probationary period.

Q How many teachers have you terminated during the first year of a probationary period?

A I have no idea.

Q Five?

A Probably at the most.

Q Over how long a period of time?

A It would be since I was District Principal and I'm very poor on dates, probably over a ten year period.

Q How many faculty members are there at Addison?

A 103.

Q And how many students?

A 1850.

Q Howold is the building, when was it built, how large is it?

A The building, the High School building, the original building was built in 1927, then there was an addition in about 1947 and then one more recently within the past six years anyway.

Q And what communities does the school serve?

A It takes....

Q Is the recitation in the Title accurate, Addison, Cameron, Rathbone, Tuscarora, Woodhull, Thurston, Erwin, Lindley and Canisteo?

A Yes.

Q In the December 17th meeting of the Board was that a regularly scheduled meeting or called specifically to deal with Mr. James?

A It was a special meeting.

Q Was James invited, by the way how does one get notice?

A This was a special meeting so notice is sent out to the Board of Education.

Q How would the public learn of such a meeting?

A Probably they wouldn't ordinarily.

Q How would James know such a meeting was being held?

A He wouldn't unless somebody specifically notified him. But there was some conversation, I'm not sure of the timing between he and the Principal of the Board regarding the meeting.

Q Did you notify him of a Board meeting?

A No I didn't.

Q And I take it it's consistant with your feeling no

hearing was required, there was no reason to notify him?

A Yes.

Q Could you explain to me just for my own, how does the educational disruption work, how does it manifest itself, how does one know its at work in the school, this disruption you feared from wearing an armband, how would it manifest itself?

A I suppose if all teachers the pupils came in contact with were in the habit of presenting only one side....

Q We are talking now about wearing an armband, you tell me in concrete ways when Mr. James wore his black armband what precisely was going to be interrupted, were the kids not going to learn English as well, English he was teaching them?

A Only to the extent that this performance would be distracting to them, that would have some affect on his teaching performance.

Q What evidence do you have that this was going to be distracting?

A I have none.

Q Do you know whether any other teachers at anytime at Addison High School wore any political ornament, for example

in a Presidental Campaign have you ever seen buttons, would you tell a teacher they could not wear a campaign button to class?

A I don't believe I did, I never had that need.

Q What's the difference between a teacher being actively involved in a community to the point to which a teacher becomes publicly identified with a particular candidate, getting wide spread coverage and that of wearing an armband, don't the students know if their teachers are actively engaged in politics or social activities, don't the kids know?

A I believe so. It depends.

Q What would the difference be?

A I think high school pupils would be able to determine with discretion. I think outside school hours as individuals that was their right and I think when in school everybody recognizes them as officers of the high school.

Q You think high school pupils 17 can differentiate between James making a personal statement and a public statement on school policy?

A I'm not saying they would, but as a school officer they would identify that with him.

Q His own personal?

A And as a teacher.

Q Why would that be different that James could acquire a reputation in the Community as an avid anti-war activist?

A I think it's very important to the pupils to understand he did this and was able to outside the school but when he came in school he became non-partisan.

Q Why would it be agreeable to make a statement, he could make a personal statement?

A If he had the context to make the statement. If it was a Social Studies class and this was within the context of what he was teaching he could give his own point of view, he could say I happen to believe this.

Q If James was a Social Studies teacher and instead of English?

A If as an English teacher he could bring it within the content of what he was teaching fine for an English class.

Q If he were a Social Studies teacher and wore a black armband to class and encouraged his class to discuss at great length the pros and cons you feel there's nothing wrong with using it in this act?

A I would be inclined to be more supportive of it,

although it would be better if he didn't because other pupils he was not coming in contact with he would not be giving these facts, on the basis of having given these facts, he put on the symbol in his classroom and carried on this instruction I would say fine if he demonstrated a feeling of discussion to the pupils whom he had given some background to.

Q And yet you never suggested to him that he could cont if he in some way integrated the issues?

A No because he immediately explained why he was wearin it and if the explanation was in conjunction with something I'm teaching and we are going to duscuss it fully, I think my attitude would be different.

Q Did you ever discuss if he would bring this in conte of the material you're teaching in school...?

A I don't believe I did.

Q In fact there wouldn't be any.... If he were teach David Thoreau, you know David Thoreau, he talked about the world, he objected to war, and you don't know whether or not his english class was studying such a person?

A He discussed what he was teaching, I was relying on what he was telling me.

Q You didn't think it incumbent on you to find out

whether it was interrelated or not?

A He indicated it was not, I had no reason to question his statement it was not.

Q And in fact if it were you wouldn't have recommended his dismissal?

A You're putting words in my mouth.

Q You wouldn't have thought.....

A If he indicated to me he was wearing it in context with what he was teaching in class I would have possibly expressed my desire he wear the armband in the class that he was giving the pupils the background.

Q And not in the halls where other pupils may well have been influenced?

A I believe they would.

Q On that last Moratorium Day Mr. Brown do you believe that not wearing the armband would have constituted a neutral position one in which a strong feeling was expressed on one side, do you think being non-partisan might have been a political action?

A No.

Q You think failure or refusal to have anything to do with Moratorium was not political, it was mutual?

A There's no way of telling whether anyone was involved

or was not.

Q So students really couldn't tell whether the band meant a political action or directly neutral?

A I don't know, I don't follow your logic Mr. Neuborne, you're way above my head, I'm just a small town boy, I don't understand your highly philosophical thinking. I don't know what you're trying to get out of me. I have a couple of lesson plans here if you would like to refer to them.

Q Do you know whether any other teacher at Addison High School ever wore a political symbol?

A I was informed on November 14th, that another teacher was wearing one in the Elementary school.

Q What did you do?

A The same instruction I gav e Mr. Pillard.

Q Do you know what grade this woman taught?

A I don't recall off hand.

Q Would it make any difference, what if it was kindergarten, do you think wearing a black arm band would disrupt a kindergarten class?

A I feel it would have less impact.

Q Did you investigate to find out?

A At the time I was aware, I was aware of the class.

Mr. Treinin: Do you want to take a look at your notes?

Q Are there newspaper clippings, I will take the accuracy of those. I take it you requested this elmentary teacher not to wear the armband?

A I didn't myself.

Q But you asked the Elementary School Principal?

A Yes.

Q What did she say?

A She indicated she wasn't aware it would be considered illegal or unethical and complied.

Q Do you know whether other situations, not necessarily an arm band, where a teacher of the Addison School System has worn or displayed a symbol which might have some connection with politics?

A No.

Q Specifically do you know whether anyone displayed a symbol or slogan, 'peace with honor' ?

A No the only knowlege I have to that is reference that I believe Mr. James made.

Q You never, would you consider that that would be improper?

A It depends on how it's displayed.

Q Just unadorned, in a science class during class?

Mr. Treinin" At what time?

Q At about the same point in time?

A Speculating, I have a feeling I wouldn't have reacted to it.

Q What's the difference between 'Peace with Honor' and a black arm band?

A It had no political implication.

Q You never heard the slogan, 'Peace with Honor'? Where do you live, here in town, do you read the national press?

A Yes I do.

Q Have you ever heard the slogan, "Peace with Honor" before?

A Yes.

Q Do you connect it in anyway with any movement?

A No.

Q You don't connect it with the President of the United States?

A No.

Q That's all I have.

Mr. Treinin: I prefer to cross after lunch.

(Examination recessed at 1:00 o'clock in the afternoon)

(Examination reconvened at 2:15 p.m.)

Mr. Brown examined by Mr. Neuborne, Esq.

Q Would you give me your educational background and educational background up until the present time?

A My undergraduate work was done at Skidmoore College, I did graduate work at Syracuse University and State University College at Albany, in the neighborhood of 60 graduate hours.

Q Toward a masters?

A About 28.

Q Have you received a Masters?

A Yes, most of that was in the field of Educational Administration. And I taught for two years a Cambridge Central School before coming to Addison.

Q What grade did you teach?

A Jr. High mathematics, grades 9 through 12, it's a relatively small high school so I had all the math 9 through 12, then I came to Addison as V. Principal and have been there I think 18 years.

Q During the time at Addison you've been engaged in supervision?

A Yes, high school Principal to Superintendent.

Q So classroom consisted of two years at Cambridge?

A Yes.

Q How long ago was that, 18 years ago?

A Yes.

Q Do you have a practice at the end of each week of distributing a newsletter or some form of paper to the parents?

A Yes.

Q Is it distributed weekly?

A Have you ever commented in this weekly newsletter on this case?

A I don't recall, if I did it would be a matter, I don't recall having commented, I would have to go back through the thing, I don't know.

Q What's the purpose of that weekly newsletter?

A The purpose is to inform the parents of some of the activities going on in the school district, it's a means of communication with the parents.

Q Who writes it?

A Usually it's informatinn provided to me from various teachers.

Q Do you ultimately determine what goes into it and what doesn't?

A Yes.

Q Would you consider it appropriate to use this newsletter to comment on this case?

A I don't believe I did use it as a means of arguing the merits of the case.

Q Let me ask you, do you see any distinction between using this newsletter and Mr. James wearing a black armband?

A Do I see any distinction, I believe I do see a distinction.

Q Can you tell me what that is?

A I believe if I used that in anyway I would try to be factual and I don't believe I did use it to expose the merits of the case, and I don't believe I would, if I used it just to convince the people the rightness of my position I expect that would be inappropriate.

Q I take it you have a copy of this thing on file?

A We can research the files to see if any comment ever was made.

Q I haven't seen it but I understand there was an edition indicating the parents shouldn't believe everything they read in the papers about this case.

A I don't believe I did.

Q You don't believe you used it to argue your side of the case?

A If I made a comment along that line?

Q Yes?

A No I don't believe so.

Q Just an objective statement?

A Just an objective statement that people shouldn't believe everything they read in the paper.

Q The implication that something in the paper was not accurate, is that correct?

A Some people.....

Q Isn't that why you said it?

A If I said it.

Q And you still don't think that's arguing your side of the case?

A No I don't.

Q I have no further questions.

Questioned by Harry Treinin, Esq.

Q Mr. Brown this newsletter is sent out to the parents, it wasn't given to the teachers in classroom context?

A To distribute it through the children.

Q It goes to the parents?

A Yes.

Q It goes to the teacher who distributes it to the pupils who bring it home. To go back to your statement of your conversation with Mr. James on November 14, 1969 you made a memo of that?

A Yes I did.

Q And that is dated what date?

A It's dated November 15th.

Q And this was the time that your conversation with Mr. Jam lasted between one -half to three-quarters of an hour?

A Yes.

Q Now without looking at that memo do you have any independent recollection as to what you said and he said?

A I have some recollections of the meeting and I hate to rely on memory alone to repeat that.

Q When was this memo made?

A This memo carries the date of November 15.

Q That was the next day?

A Yes the next day and I would rather rely on what I said at that time.

Q Referring then to your memo would you tell us what took place on November 14th between Mr. James and yourself?

A On the morning of Friday, November 14, 1969 Mr. Carl Pillard, High School Principal, reported to me Mr. Charles James, teacher of 11th grade English, had appeared at the school wearing a black armband. Mr. Pillard asked what if anything he should do about it. I directed him to call Mr. James to his office and ask him to remove the armband. Furthermore if Mr. James refused to remove it he should refer him to me. Subsequently Mr. James refused to remove the armband. Mr. James arrived at my office. We discussed our respective positions regarding whether or not he as a teacher had a right to wear a black arm band in conjunction with National Moratorium and as a symbol of his policy to the war. I explained to Mr. James it was my opinion that Moratorium was a political activity and as such unethical and illegal as a teacher to use the school as a forum to seek his political views either symbolically or vocally. While assuring him that I recognized his right to hold these political views and to participate in political activity when not on duty as a teacher for the school. I felt that his wearing an armband while on duty as a teacher was not proper. I also explained to Mr. James that a teacher could discuss controversial issues in school when they were

timely and pertinent to the course being taught, but that right also carries with it the obligation to objectively present all known points of view on the issue.

Having done this the teacher could let it be known what his personal views were, emphasizing the right of others to hold opposing views. I explained to Mr. James it was my opinion that his wearing the armband would tend to be disruptive and possibly encourage pupils to engage in disruptive demonstrations that possibly there would be divisive effects on teachers. I explained to Mr. James I would obtain legal counsel regarding his rights and opinions as well as those which appeal to the District Principal and Board of Education. However this would take a little time.

In the meantime it would be necessary for me to insist on his removing the armband before returning to his teaching assignment. That a refusal to comply would necessitate my suspending him until such time that I had further direction from legal counsel and the Board of Education. I assured Mr. James that if it was established I was correct in my interpretation and decision regarding his situation there would be no loss of pay during his suspension, otherwise it would be a matter of determination of the Board of Education regarding the

duration of his suspension and possible loss of pay.

Mr. James explained his reason for wearing the armband and stated that it was a matter of principle of which he felt obligated to stand, he refused to remove the band. I informed him he was suspended and he should return to his classroom to pick up any personal effects then to leave the school. I informed him I would contact him as soon as possible after consulting with the Board of Education and the School Attorney.

Q Now in what sort of spirit was this conversation held?

A I believe it was very low key, conducted in a gentlemanly manor by both parties.

Q I t wasn't argumentive?

A No arguing.

Q You had a calm discussion of the issues?

A That's correct.

Q You were asked about the effect on the teachers, did the teachers take any action or react to these incidents?

A Yes they did.

Q What did they do?

A According to a letter from the President of the Teacher's Association they acted upon a resolution basically

in support of the action of the Administration and Board of Education and they sent a letter to the Pres ident of the Board. And this letter as I say generally supports the position and action of the Board of Education and the Administration. They sent us a copy of the exact resolution which was acted upon by the group.

Q Now your actions on both occasions in November and December were made in reference to Mr. James wearing of the arm band and were they also made in reference to conditions of the situation in the Country at that time?

A It was in the Country's general climate.

Q What is your recollection as to the climate of the times politically?

A It was a period of public division and disturbance. There were papers, and television carried descriptions of various demonstrations that were being conducted in Washington and elsewhere in the country.

Q And as a matter of fact did Mr. James tell you he was planning to attend one of these demonstrations in Washington?

A Yes he did.

Q That was on the first occasion?

A That's right.

Q Now you were asked what your reaction would be if someone had put 'Peace with Honor' on the blackboard in a science laboratory, did you have that situation before you?

A I did not meet that situation. If I had I would have had to evaluate it in terms of the times. That particular slogan at the time did not carry any context at the time.

Q Do you recall the actual policy in Washington, were there any meetings in Washington or other principal cities in favor of 'Peace with Honor', do you recollect?

A Not to my knowledge.

Q But they were in favor of disengagement of the Vietnam War?

A That's right.

Q In connection with the movement represented by Mr. James armband?

A Yes.

CHARLES JAMES, affirmed testimony as follows:
Questioned by Harry Treinin, Esq.

Q What is your full name?

A Charles G. James Jr.

Q But you brought this action in the name of Charles James?

A Yes I guess so.

Q How were you listed in the Records of the Addison School District if you know?

A I'm pretty sure with the full 'G' and Jr.

Mr. Neuborne: Do you have any trouble knowing.

Mr. Treinin: I'm just interested with the Jr. and 'G'. Where were you from Sir?

A Hornell.

Q And went through the public school at Hornell?

A Right.

Q Where did you go through high school, also Hornell?

A Right.

Q And College?

A I went to several colleges.

Q Would you give us your resume?

A I went to Cornell, I went there before I went in

the Service and in fact released from Cornell far from honors.

Q I won't ask the next question, I don't want to embarrass you?

A It won't embarrass me, I just didn't have good grades. Post graduate, I started in high school for Post Graduate then went to Cornell. I worked as an apprentice as an azalea grower in South Carolina which is really under my father's employ. And the next thing I remember was enlisting in the service.

Q How long were you in the service?

A Three, I enlisted for four, got out in three.

Q In what capacity?

A As a machinist in teletype.

Q You spent all three years as a teletype operator?

A Right.

Q And you were honorably discharged I take it?

A Right.

Q And then did you go back to school?

A Yes.

Q Where did you go?

A Mansfield State College for two years and to Temple.

Q What course did you take at Mansfield?

A Primarily history and english.

Q Did you graduate from Mansfield?

A No from Temple.

Q With what degree?

A BS in education.

Q Did you take up teaching?

A No I went to Colgate Divinity School.

Q Is that ministry?

A Yes.

Q How long were you there?

A Two years.

Q Did you get your degree?

A No.

Q Where did you go after that?

A I went into teaching.

Q And where did you teach?

A Banbridge Central School, I'm having trouble remembering, it was four years, '62-'66, '63 - '67.

Q After that where did you go?

A H.R. High School 145.

Q Where's that, in the Bronx?

A Yes.

Q And after that?

A Addison.

Q How did you happen to apply at Addison?

A Well my application at Addison was really a contextual thing of coming up near and contiguous to an area where I was as a boy and I was familiar with.

Q Did you apply to any other school district in t[illegible] area?

A I had two interviews given me by Frank Miller, two places they had openings out of the Bath Office, one for Avoca and the other Addison.

Q Did you apply to any other school district?

A No.

Q When you joined the Addison School District were you a member of any organization?

Mr. Neuborne: Could you make that more specific?

Q You stated in several instances you were associated with a peace movement?

A No organization at all.

Q Were you a member of any peace movement?

A I was a member of the Quaker Society of Friends in Fleshing, but when I came to New York I had not joined, you can

attend five to ten years before contemplating joining.

Q So when you came to the Addison area you were not a member of record of the Quaker Society?

A In the term of the Quaker member I was not.

Q Did you become a member in a local member?

A I started attending in Elmira about, we moved up in July I guess it was.

Q 1969?

A We looked for quite a while because they didn't have any telephone listing so we must have been here two months before we found the meeting in Elmira.

Q And when was that when you attended your first meeting?

A It must have been, it would have had to be late August I would think.

Q So you didn't attend any meeting of the Quaker Society of Friends in Elmira until August of 1969?

A I don't think so, I would have to check to make sure.

Q Either August or July at the best is that correct?

A Yes we started checking around, it seems to me quite a long time.

Q You joined generally speaking the fall of '69?

A Yes we found a place to go.

Q Now you attended that meeting not as a member who was transferring from another meeting?

A Not in the social sense no.

Q So that you came there and you met with that society in Elmira?

A Right.

Q And on how many occasions prior to November 12 did you met with them?

A We got there most every Sunday.

Q Were you ever accepted as a full fledge member of the meeting?

A I never applied for membership.

Q You never applied, you're not now in the Rooster of the Quaker Society, are you listed as an accepted member?

A I subsequently did apply.

Q That's after the incident we are talking about?

A Long after.

Q Long after, so that on November 14 and December 12 you were not a member of the Quaker meeting at Elmira?

A Right because Friends....

Q I'm just asking the question...

Mr. Neuborne: Let him explain.

A It's mearly one in which it's a kind of long gestation period before you are allowed to join, it's almost the opposite of one where you enter the church and everybody rushes up and says won't you join.

Q But you had attended the Fleshing meeting?

A Two years.

Q So when you came here it wasn't as a transferring member.

A No.

Q And when this incident happened you weren't a member of the Elmira meeting?

A No.

Q Now you stated at various times that you were associated with a peace movement, what did you mean by that Sir?

A As a youth in my own Church in our town, I had been on the World Peace Commission as a high school youth and under the leadership of the Pastor that was very active.

Q World Peace Commission as a youth?

A Right.

Q How old were you then?

A 16.

Q Were you ever a member of the Ministry?

A Methodist for eight years.

Q In what Church?

A You mean in what Parish, Gans-Marshland-Asaph.

Q And you were the minister there for how long?

A Two years, I went down to Temple, I commuted from there to Mansfield while I went to Mansfield.

Q Were you on any other committee or associated with any group in the Peace Movement?

A No.

Q Did you engage in any demonstration?

Mr. Neuborne: I really fail to see the relevance, I object most strenuously but if you want to answer go ahead.

A To which point.

Q Prior to the occasion we are discussing here.

A Yes when I was in New York I made a couple of different appearances with my wife and children in the 5th Avenue Peace Parade march along with the whole delegation.

Q Just as an aside, didyou ever meet with anyone from the CLU and sign any papers in Monroe County at Rochester or any where in Monroe County?

A Not that I ever remember.

Mr. Neuborne: Again I have a continued objection.

Q In relevance with these papers, did you ever sign any papers in New York Office, the papers in this case in the Federal Court of the Western District?

Mr. Neuborne: You're suggesting his signature is not appropriate?

Q Where did you sign the papers in this case?

A I don't know which papers you're talking about.

Mr. Neuborne: He had something notarized here in Corning.

Q Did you ever have anything notarized in Monroe County?

A I don't remember...

Q Do you know Tobby Joe Platt?

A Who is she?

Q Yes?

A Notary Public.

Q Where?

A She works out of New York City.

Q Where did she take her acknowledgement?

A I don't know whether it was when she came up State or in the City.

Q Were you ever in the City and signing papers?

A I don't know if I signed papers, I went down to see Mr. Guttman.

(Off the Record discussion)

Q Now will you help us to understand the Doctrine of the Quaker Faith, is there something cataclysm or a statement of principle?

A There is no doctrine, I don't call it religious, but it is a religious society of those having to affirm, there's no doctrine, you believe in the life of God. That there is that of God in each man.

Q Everyone gives his own interpretation of that right?

A Right.

Q You say you don't have a doctrine imposed on all?

A No, it's up to the descretion of each individual, their opinions are talked about, Quakers are taught not social, but that which would be human, it's a lot more than sounds on the surf

Q Certainly it is not a situation where all are required to a doctrine under a fear of excommunication?

A Absolutely not.

Q The preference for individual differences?

A Right.

Q Every man follows his own conviction?

A True, conscience is one of the most important.

Q Does it mean that every Quaker took the same stand on interference situations such as the VietNam War?

A No.

Q Was there something akin to equivocal about our involvement in the war?

A All the Quakers, with the exception of the orthodox Quakers, there was a split once, they made statements that not the type of statement normally made by a lot of people politically, these statements would be very hard for the average person to understand, and this was a combination of those groups and they were for the most part one group above or below. The Quakers were sending medicine tc Vietnam regardless whether it was North or South, it didn't matter.

Q But there was division among the Quakers?

A Most of the Quakers I ever had, by my definition, but I know a small orthodox that still assist a view of who might be against the war but in a way it's so outmoded.

Q Is it your contention that your faith took the same position as you do in reference to the War?

A All the Quakers I know would have agreed with my position in War.

Q Was it mandated by your faith you take that position?

A No.

Q It became your individual position is that correct?

A Yes, within a communal, there's a corporate understanding.

A fair determination.

Q Your individual determination?

A The decision has to be.

Q Is it fair to say that the Quakers faith generally speaking encourages a meeting of mind in mind on any action?

A Right, We cannot settle anything by a majority vote, there's no such thing as vote, it has to meet what is called sense, which means everybody's in agreement.

Q How is an agreement arrived at?

A When you reach a point at which argument fails.

Q Is that sense arrived at after looking at all sides of the issue before it's made?

A Right, we have a lot of discussions and arguments.

Q In other words to arrive at the sense of the matter you discuss all the facts of the incident?

A Right.

Q And if you disagree a full discussion of all opinions is encouraged?

A Yes.

Q A full description of all opinions is encouraged, is that not right?

A Right.

Q Is it fair to say in this certain doctrine of faith it is felt necessary for the citizens to have facts to all, truthful facts to know where to go in the political relm?

A Sure.

Q In other words if you want to make up your mind on a political situation it's felt all the sides of that, all arguments relevant should be discussed by the meeting?

A Sure.

Q And would you say it's fair to state that among Quakers there is differences of opinion as to how far you go in dealing with a controversial situation?

A Yes.

Q Of course.

A Can't have composite / opinions on how to deal with conjecture.

Q Each individual must ultimately follow his own thinking as to truth situations and his duties in reference thereto?

A With exception if somebody is against activities, that which is not considered in harmony with the Quaker practice then the meeting must censure that member. There's a little book known as "Advice and Quierie." The Philadelphia and New York meeting don't use the same Advice.

Q You feel bound by New York?

A No, in fact we have a large number of people driving in from Mansfield and Towanda area.

Q Which meeting do you feel bound by?

A I'm not bound by anything, these are still Advice and Quierie and not a doctrine.

Q So there's a difference of opinion as to war and how to meet it?

A There's a difference of opinion whether we all agree. There were a number of us who would have said anything except respect of the abhorrence regarding the war and the obstruction of life. The differences were the manor of action a reaction regarding this.

Q Is it fair to say when all said and done that each individual person is on is own as to reaching his own determination?

A Yes sure you have to be, it'a an act of conscience.

Q So really when all said and done you reached your own decision in reference to war as a person, is that correct?

A But within the harmony of the meeting, the final decision was definitely mine.

Q Charles James made up his mind?

A Not your mind.

Q Made up your opinion?

A Mind is only one segment of your body.

Q It was Charles James conscience?

A True.

Q It wasn't something imposed on the outside, you reached it on your own?

A Yes.

Q And if you reached the contrary decision certainly you would not have been excommunicated?

A I would have support if they did, the meeting was held as representing them, which it was because it was discussed and it was the group action of the people, I was not the only one represented eventhough it was a conscious decision, many other people that were there made conscious decisions also.

Q You recognize some made contrary and some for?

A Yes.

Q So that there is a difference of opinion among Quakers on these vital matters?

A Yes I hope there is.

Q Is it true also to say one of the current concerns of

the Quaker faith is education?

A Right.

Q Is it true to say one of the concerns is to seek to ..... It is one of the ideals to seek the reaching of an unprejudice ideal?

A Right prejudice means making a decision before.

Q Before you know all the facts?

A Before you have any information.

Q In order to make an unprejudice ideal you have to know all the facts of a situation whether you agree with it or disagree?

A Have to know as many as you can, I doubt if you would know all.

Q All certainly available to you in order to reach this unprejudice ideal that is one of the things sought by the Quaker faith?

A Right.

Q Would you say if you gave a child only one view, let's talk about the war, which I hope we can talk in the past tense, only one view, the administration side, could he have reached this unprejudiced ideal, unprejudiced view of his role as a citizen of this country?

A Now come again.

Q If you just gave him one view?

A I thought we just covered that by saying we have to have as many facts as possible. Now you're talking about a child in a Friends meeting?

Q Any human being, certainly your answer wouldn't be any different if I specify any child?

A No but you did ask the question in reference to the meeting.

Q Certainly you would feel no....

A No but the way you said it, the philosophical function does reflect on the context.

Q Let's go back, let's assume from the point of view of any young person, in order to attain this unprejudiced ideal would have to know all ascertainable facts of any situation, is that correct?

A I don't think any body ever had an ideal after knowing all ascertainable facts, ideal differs, ideal comes from within, it would have nothing to do with the consciousness of cognition.

Q Do you feel in ascertaining your facts of a political situation you should have all the ascertainable facts?

A If you're trying to draw a political decision.

Q And if you're trying to make any determination you should have all the ascertainable facts?

A It would not be necessary for Quakers to have all ascertainable facts to make a determination such as killing because life is sacred regardless of what political or social statements are surrounding that issue. I don't know why North Vietnam destroys people as well as South Vietnam, in either case it's not desirable.

Q But in making a conscious determination in this Country's political action would you feel it's necessary to have all the facts of the situation upon which that action is based?

A I'm not, really how do you mean conscious determination, whether you're speaking of my coming to an understanding.

Q Your own understanding, whether for or against any action taken by this Country?

A Any action taken by my Country by the fact there is destruction of life I'm against it. Then as a responsible citizen I seek to know to understand why people understand, but I don't have to know any facts against extermination of life.

Q You would feel the same way if our Country were attacked?

A The Quakers said to King Charles under no condition would they take up arms against their fellow man.

Q Even in self defense?

A Right.

Q Now your feelings about it stems wholly from your religious feeling on the subject or was there any other consideration involved in arriving at it?

A I can't recall any consideration other than religious. I should make it clear what I meant by that, I'm sure you want/to me. Obviously those things that can spring from religious responses can be seen by others as having political implication and I understand this is what you're saying. Part of the Quaker responsibility is that you realize that you have increasing difficulty articulating to people your position arrising out of religious to those like political that we have here, and most people react other than asking questions eventhougn they started out by asking questions. They react by telling you what you mean rather than finding out. Because If I say killing in Ireland is terrible somebody will think I must be involved in it politically, that's their interpretation

to what's happening in Ireland. If I say particularly now taking a subject like police brutality, somebody might take it as my position to band for a permissive society.

Q Then you recognize the fact what you say stems from religious, to others it might appear to be political implication.

A I think that's obvious from the case.

Q You appreciate two different people can honestly seeing one incident says this is my political conviction and the other looking at the same action says this is my religious action?

A What happened in my case I realize now the fact it was, my religious action was never accepted as reality, I think it was automatically accepted as a political one. Therefore the ccntent of the action as I told Mr. Neuborne, the content of the act was interpreted for me instead of my being the interpreter of the act.

Q So you recognize the fact that what you claim as your religious affirmation to another one totally unprejudiced and totally responsible may appear as a political affirmation?

A Unless he's good enough to come up to find out what happened.

Q But you understand that this happened. You can see

that a totally responsible person can interpret that way, is that not so?

A Yes that can happend, but it seems to me that the interpretation did result from the fact that there was a kind of inability on my part maybe to make clear what the other options were or the inability to really see the number of different options there were to really see the possibility of why that armband would be worn. It's like seeing two sides, like seeing me in two sides, you just finished saying unless communication is non-existant there is a possibility of understandingso the two sided mystery exist.

Q Do you feel you fully expressed this matter as you expressed it now to Mr. Pillard and Mr.Brown?

A I think the decision as to whether it was going to be accepted was made before I entered the office.

Q Why?

A Because I was asked to remove the armband .

Q You just said that someone totally respOnsible can interpret actions differently?

A But I also said if communication was not non-existant that there was a possibility of understanding.

Q Did you try to explain it?

A I made the opening statement that I was against killing and my opening statement was returned to me that it was really not that but a political action so there was poor communication already. I do recall also that I thought one of the desireable things of education was to actually present a speculation of truth, that was really a good thing, to have somebody somewhat different in some particular way in the background.

Q Were you ever offered an opportunity to appear before the Board?

A Not for a hearing, I wrote to them and gained the impression it would not be a hearing, only an opportunity for them to listen to me without me having any protection whatever in this situation.

Q Was that conditioned upon your coming alone without an attorney?

A I don't understand.

Q Was that invitation conditioned upon your coming without an attorney?

A No attorney was mentioned.

Q Why it wasn't stated you had to come alone unprotected did it?

A No it wasn't, in effect I already had been cancelled by the P.T.A. This was not a situation where I considered myself neutral and no situation where I considered myself in a situation where I would have a neutral audience.

Q Was any protection denied you?

A I didn't ask, but when told I could have a hearing I thought it unwise, I again talked to the Civil Liberties Union.

Q And on their decision.....

A They didn't make the decision for me.

Q You never said on the advice of counsel?

A This person was not a lawyer.

Q I see, so you had the opportunity to appear before the Board?

A Not in the kind of situation I thought was sensible or desireable.

Q What kind of situation would you think sensible and desireable?

A One in which there would have been, that was another thing, there had been no inquiry asking me what my interpretation was of what I had done.

Q Would you answer my question?

A One in which I would be invited by the Board?

Q Were you?

A Not until after I wrote.

Q Were you invited?

A Not until after I asked.

Q But you received the invitation?

A Right.

Q And you did not take it?

A Because in a hearing, and I was very aware having worked in New York City and having been a teacher in New York City and all the things that went on regarding ones Board and Administration, terribly aware of the meaning of what was a fair hearing, that's why I sat back and made a second thought and I thought it would be very unwise to do such a thing because I understand very well the world in which I live and realized it could be a situation where a lot of disagreeable comments could occur. I had a minimum of mind situation where I easily could have been on the defensive, for instance as a faculty member I was aware of their problems.

Q We are talking about...

A Attendance would have been suicide on my part.

Q You had no faith in the Board?

A I do believe the Board had stated an opinion in this case.

Q But if they asked you to come and talk, do you...?

A They didn't, I asked and there's a difference I asked them.

Q Eventhough you asked them and it was granted, you didn't take the offer?

A Granted, in true Quaker fashion I changed my mind.

Q You did want the opportunity to express your views?

A Not under those condition.

Q Did you ever state the conditions to the Board under which you would welcome the hearing?

A Well the error was mine, I should have been more Defensive.

Q You admit you made an error in not attepting to communicate with the Board?

A Well not making known what kind of hearing I wanted.

Q What did you want?

A I wanted a hearing, I should have asked.

Q All the time of course with the advice of counsel?

A No, not all the time.

Q But you were, but you had written...?

A That letter to the Board was strictly an act of my own.

Q Any reference to counsel is in error?

A No, it depends on how you use the word counsel, whether in meaning a lawyer or somebody who, what I would call intellect. If I did talk to a lawyer then I did speak to a lawyer, so if I called him an intellect then the man I talked to would be called Harrop Freeman.

Q And Harrop Freeman is a very well know legal scholar and legal teacher in Cornell. When did you first make up your mind to wear this armband?

A When I first made up my mind or last, that may sound equivocal, I considered it but never made this decision until I put it on that morning.

Q You made your own decision, it wasn't a decision you made at the Friends Meeting?

A Armbands were distributed to the members of the Meeting, they took them to their homes with them but no body told them within the Friends context whether to wear them.

Q So you made up your mind the morning of November 14?

A Right.

Q You made it up individually and separately and apart

from the meeting?

A As far as it being a conscience decision on my own you're right.

Q It was your own conscience decision you made yourself. How did you get to school?

A I drove.

Q Alone?

A Yes.

Q Was it a cold day do you remember?

A No I don't.

Q You wore a top Coat?

A I usually do.

Q What was the purpose in wearing the armband?

A My purpose in wearing the armband could be simply stated if somebody looked at that armband and were able to think a second about the killing that was going on that would be worth it you know,

Q You wanted to get people thinking?

A To activate their minds.

Q Thinking I suppose in the way you thought?

A No, to think about life being precious, in a very rapid moving society sometimes people don't stop very often

and think about the preciousness of life, we move on an economic pressure rather than....

Q So your purpose and hope was that people would think along the line you thought about it?

A I can't determine what the others would think, but my hope was that they would think that live was precious or not even think that, that somebody does believe life is precious that doesn't necessarily believe that life was but think that it was. And there is a difference there.

Q So in the true sense you were trying to secure approbation for the same ideals that you had?

A I was hoping, maybe I shouldn't say yes because it sounds like a blanket response. I was hoping that at least my wearing of the armband would make anybody who saw it aware of the fact there were those who saw the preciousness of life as a high priority.

Q And they would assume this high priority, certainly you didn't try to make them to think the opposite?

A I think what you said was poor, I was trying to get them to think.

Q Along your line?

A Just somebody around who would think that life was

precious, to get somebody to think along my line? What's my line?

Q That life is precious?

A But unless, It's pretty hard to believe that somebody would see me wearing the armband is what I'm saying and be able to come up with an affirmation/equivalent of concern to mine as a result of observing the armband. But thinking primari of the process of awake and then proceeds and does his own thinking from that point on. But surely then just to get somebody to think about this is a pretty important thing.

Q You were aware of course that the Country was torn over great descent over this at the time?

A Yes.

Q That the Country was very divided at that time?

A Right.

Q And this division was at paramount in terms of our newspapers, magazines and radio and televison coverage, so that in context of those events you took this step on that certain date, is that correct?

A Right.

Q Now did it occur to you to take steps on other times when great throngs of people did not come to Washington to

demonstrate against Government action?

A To make a statement that has ineffectness in the minds of others is a simplistic statement it seems to me, it would in a sense getting mindless pressure.

Q So you were part and parcel of this great, which we calle throngs of people, demonstrating against war in Vietnam?

A Only if peace would return to the people, There's a wide difference among people who observed the marches, there was Marx, socialist, communist...

Q But all object to the war, all had this in common, they object to the war?

A Some overlapped in their opinions to war.

Q This they had in common, against Government Policy or the Nixon Policy in the way he handled the Vietnam situation, is that correct? They had that in common did they not?

A Except the opinions of those who saw this as a political action would have returned to attacks and destruction and suggestions of violence where as those who's traditions, in other words the Quakers tradition opposed this and have never stood in anyway in oposition to or in a political situation. They haven't belonged to a political policy.

Q But in part or parcel you took part of this?

A Yes but not political.

Q It was political?

A Yes.

Q and you were part and parcel of this whole movement?

A I know what you're trying to say, I'm trying to make a point, it wasn't as simple as you say it must be.

Q You were not in all the way?

A There are some who, quote, I would prefer not to call Friends, as part of the misunderstanding, they obviously took part as fair weather participants, there are those people who are fair weather friends, something like this, they think they're wholly in common with you and when you head off, they are gone, this kind of thing.

Q You included yourself as part of this giant protest against the pursuance of the war?

A I consider myself part of any protest who's doing killing.

Q Now before you took this action of November 14 did you discuss this with any other teacher, did you discuss it with an attorney?

A No.

Q Well did you discuss it with anybody?

I think there was a quiet conversatation or consultation at the breakfast table with my wife.

Q Did you discuss this within the context to your relation of this action to your job as a teacher?

A I wasn't afraid, if you're asking regarding my relation with the students, I surely wasn't afraid of causing the students to think. I think that's what should happen, the only thing. It's the more rigid adult who might pause in passing me in the hall if I had the armband on, kids are not as easily influenced as people think.

Q Of course when you entered that school house gate, to quote a phrase, you were a teacher?

A I was a man teaching, there's a difference.

Q You were a teacher?

A The only reason I say that, because Mr. Brown is a President, but he is also a man acting as President, a father, a husband, I'm more than a teacher.

Q When you come to the school to teach would you consider it was your job to teach your children all the relevant facts there are in regard to any circumstance being discussed or put before the class?

A If I had been asked questions, I would have answered it.

in other words within the context of the class room experience, if some student said what are you wearing that armband for, what is the meaning of that armband, if there had been an inquiry within the context after the bell rang, in passing in and out the door it wouldn't necessarily be a conversation imposed before the class, but if there had been a question posed before the class I would have sworn to answer that question.

Q Did you invite questions?

A That's a deviate trick of teachers, you might mention there are many points of view over war, that gives me an opportunity to give my view,

Q You stood silently by letting the armband stand for itself?

A Yes.

Q Did you consider the background of the times or shall we say the build up to Moratorium, you took your action in the light of those situations did you not, you didn't divorce yourself from that?

A Definitely not.

Q You knew that in many cities there were fears of riots?

A The fears of riots were in opinion rather than real.

Q It was there, it was discussed in the press?

A I was in the places where they were afraid of riots, there was nothing.

Q But they were discussed in the press?

A That's right.

Q And you realized certainly that you were taking a stand on what, to put it mildly was a highly controversial issue?

A Yes.

Q As a teacher what did you consider your primary duties to act as a teacher or a man expressing your personal views?

A I never say anything about being a man in the classroom expressing my personal view.

Q Well were you by wearing the armband in the classroom?

A I was making a simplicit statement.

Q That happened to be your view?

A Right.

Q Did you try to equate it with your duties and obligation as a teacher?

A Right and I see a high harmony, because my own belief is that the right question is more important than the right answer, it goes along with the fact you're getting somebody to

think, Socrates stated he wanted to sit on one hand of the whole, he believed in stimulation of the mind, if my wearing of the armband caused somebody to think, it was the finest thing that could happen.

Q Did you know as an intelligent person growing up doing reading, discussing and that, that this armband stood in the pupils mind as an expression as against participation in the Vietnam war, you appreciate that fact idid you not?

A Yes.

Q And you knew that it stands as an expression as political that the President was pursuing?

A Anything that was killing I was against.

Q So you knew it was an expression against that, you also knew it was an expression against what was called pull out of our troops from Vietnam, strike it out.

A I don't remember pull out of troops was a big issue, issue or not from the outset of the Vietnam War I was against killing, I don't remember that pull out of troops was part of the proposed defeat.

Q General expression against our Governments participation in the Viet Nam War, generally speaking?

A This is a very misleading statement unless you mean

in the name of peace, that's taking a very simplistic view.

Q But you realize that saying struck many people this so called simplistic view?

A Some people it would I agree.

Q You realize to then your wearing this was against the policies of the administration in Washington?

A To those people right.

Q Now we have various duties and obligations, which did you consider as you walked into the school that morning your superior duties as a teacher going to teach a class in English or as a person who wanted to express his opinions on Vietnam policies?

A My problem there is I don't see how you can divide the two, that's why I said I was a man teaching rather than a teacher, there is a change in mask, but I hope I'm the same person in the classroom as I am on the outside, I'm not saying I am, I'm saying I want to be.

Q In other words you feel you have the obligation to bring with you your political ideals when you teach your class in English?

A I'm saying I can't, nor can I suddenly say I don't have ideals, but this is not a political conviction as far

as I am concerned.

Q And you feel that the classroom was the proper place to promote those ideals and political principles?

A Like I think it's within the proper responsibility of whoever is teaching the class, the purpose of teaching is that the minds of the students should be educated to that reality.

Q You of course wanted to get as many people to be aware of your feelings as possible when you left home that morning?

A I'm not sure I understand.

Q You wanted to make as many people aware .....

A Not true, the desire is to have people see that armband, but the desire is not to change ones pattern so that more people would see it than I would normally see in my regular travel.

Q Why didn't you put it on your top coat as you went down to school?

A Are you sure I didn't?

Q I don't know, I'm asking you?

A I was trying to remember, I might have had two, one on my top coat and one on the sport coat.

Q Did you?

A I don't know.

Q Did there come a time you put it on?

A We know I had one on my sport coat, in fact it was this one I have on.

Q And did it occur to you to put it on ;your top coat?

A I'm not sure, I was thinking, the first time I wore the armband it was on my top coat that my wife pinned it on before I left.

Q Did you take off your top coat?

A I was under the impression there were two armbands, I Was under the impression I wore two armbands.

Q In other words, I withdraw that.

A Its fuzzy for me now.

Q You told us when you stood before your English class you did not invite discussion as to the meaning and what it meant to you?

A Yes.

Mr. Neuborne: Can you clarify how long he was before the English Class?

Q You started the English Class at what time, Mr. James?

A As I recall that semester I didn't have any class so I

was called out very early in the second class.

Q What time did your second class start?

A About 9:30.

Q And you were called out after how long a period of time?

A 9:40, something about that would be my guess.

Q And you were called out by Mr. Pillard?

A Right.

Q Now did Mr. Pillard have, what did he say to you?

A I affirm what both said this morning.

Q The only pa .cipation of Mr. Pillard as described by Mr. Pillard and Mr. Brown this morning, you heard their testimony, was Mr. Pillard's participation as described by them?

A As I say I affirm.

Q Do you recall whether Mr. Pillard had anything to do with your being suspended or terminated?

A I don't know what that really means.

Q You made him a party to this, you showed him in this case?

Mr. Neuborne: I object whether Mr. Pillard is liable for this is really a legal conclusion.

A I don't know what the levels of responsibility are.

Mr. Neuborne: At the present time we have no information that Mr. Pillard acted in any other way then described this morning, and his liability appears to be holding second.

Mr. Treinin: Or perhaps further down.

Mr. Neuborne: Mr. James is not going to try to engage in any personal vendetta with Mr. Pillard.

Q Now do you agree the interview with Mr. Brown took a half-hour to three/quarters of an hour and was conducted in a quite and gentlemanly fashion?

A Right.

Q And the statement he read was in substance correct?

A Yes.

Q So that there was a discussion lasting half to 3/4 of an hour before there was this suspension the first time on November 14th?

A My mind fluctuates, I was thinking the other time.

Q This was after conversing one-half to three-quarters of an hour he felt he was required to suspend you.

A Well I was sent to his office because I didn't remove the armband, I had already been told to remove it before I went in. I think that should have been very clear, therefore, although I agree with the time I would say the context would

be one in which it was gentlemanly in a situation avoid of the fact, I felt what he said to me was very frank and honest about his feelings and his feelings seemed to me to be if he knew it would be certain, he said something, that he was in his right to get rid of me he would.

Q Did he also ask you to take some alternative method to test out what you stated were your principles?

A He said he was going to check into what his rights were, he told me what were mine, possible suspension in the second case, but not the first.

Q You mean in December?

A Right.

Q What did you do after this session with Mr. Brown?

A I asked him, I wasn't used to being fired, what was I suppose to do.

Q You were fired?

A Well I used the term, was I suppose to wait till noon, he said no, he wanted me out right then, and he provided for me to take the students to the cafeteria as I recall but maybe that was the second time.

Q Tell me what you did after that?

A I went straight to the room and checked on the class

to see what was the classroom situation and they were all very quiet, a few were turned sideways carrying on a very low conversation. I went through Mr. Brown's office, went back to my room, picked up my books, had a few words with the Department Chairman outside, picked up my books and went to my car. And from there I went to meet the parish in Big Flats.

Q To talk to Reverand Roe. Who called the newspaper?

A Mr. Werner Salie. I went from Big Flats to the visual that was going on and went in and set down in kind of a shaken condition and told what had been my experience and I got up and left, and when I came back through the little meeting house building, he said he had called the paper.

Q Now there came a time the next day when you received the letter from the Board?

A Yes.

Q And you read the letter?

A Right.

Q What did the letter mean to you?

A What it meant to me was very clear. I also called the C.L.U. on the way home.

Q In Ithaca or New York?

A No I called New York, they said it had to be channeled through up-state then I called the up-state telephone number they had given to me in Ithaca, Thompson Chambers and talked to Mr. Burgevin who said he would contact Harrop Freeman which he did and said he would also call the school but that there would be a letter that night and he said, "they can't do that" , you were within your constitutional rights but I should still speak to a lawyer. So that's when I came back from my trip to Washington.....

Q You went to Washington that Saturday?

A Right, I had decided I wasn't going to go then after I was suspended I reversed my decision and decided to go again. When I returned from Washington, the letter from the Board of Education from Addison had been delivered to the house, and I read the letter and I understood the letter as a continuation of what I considered failure to recognize my right to the first amendment and not within therefore their rights, and also in that letter which I got I think on Monday, so that would have been after school on Monday, was in the mail from the C.L.U. in Ithaca and was of course in total rejection of the charge political activity.

Q Did you make your opinions of that known to anyone

in the school administration?

A No, not to my knowledge.

Q Did you have any doubt that the Board intended you not to wear the armband?

A I didn't have any doubts, I disagreed, but there was no doubt.

Q When you read the letter from the Board deeming your action to be a political act, you knew they meant wearing the black armband?

A Right.

Q In the interium between the first and second Moratorium did you at anytime attempt to discuss with Mr. Brown or anyone as to any diversion agreement on that letter?

A No because there was no cause too, I wasn't initiating, they were, the request came, that came from the C.L.U. to them.

Q You were asked to come before the Board Meeting, did you tell us previously you decided on advice of counsel not to take advantage of it?

A I determined from my situation, when accusations or statements, the most that could be opened to me was a kind of audience, but not a hearing even in the simplistic sense.

Q That was you unilateral decision?

A But surely based on experience .

Q But not on the experience of this Board, the Board had not, are you claiming they wouldn't give you a fair hearing?

A I do not believe the Board would have changed their position.

Q How do you know that?

A I said I don't believe.

Mr. Neuborne: Well the minutes of December 17 speaks for itself.

Q So you had no doubt that the Board considered your wearing of the armband a political action and they didn't want you to?

A I had no doubt they considered it political and they supported the President.

Q When did you make up your mind you were going to wear the armband on the second Moratorium day?

A At approximately the same time, sometime between arising and arriving at work.

Q Did you feel as a decent human being you should have felt obligated to discuss this matter with Mr. Brown or someone from the Board?

Mr. Neuborne: How?

Mr. Treinin: As a human being?

Mr. Neuborne: Did you feel any obligation to discuss this with Mr. Brown?

Mr. Treinin: Alright, did you feel any obligation?

A No.

Q Did you feel you were in the school under conditions set forth in the letter of November 15th?

A No.

Q You didn't feel you were bound by that letter?

A No.

Q You felt that the letter was absolutely nulity?

A I didn't say that.

Q You felt you weren't bound by it?

A If you mean was I as far as jurisdiction bound, yes I did, but if you mean my conscience was bound by it no, I didn't feel bound to it. Yes I knew who carried authority, yes I knew who would release me from my responsibilities, but yes I knew who also had to answer to his conscience and it wasn't to either the Board or the President.

Q You felt your conscience was superior?

A No I thought it in harmony with the Constitution of the United States.

Q That we are trying to determine.

A I believed that, I really did, that's the result of going to Hornell High School.

Q And you didn't feel you were at least obligated to discuss this matter with Mr. Brown?

A No.

Q You felt no obligation to discuss with Mr. Brown before wearing this armband?

A Right.

Mr. Neuborne: Let me say that is my position in this case, and I also advised Mr. James.

Q What was your feeling when you put on the armband knowing Mr. Brown's reaction, what did you expect?

A I don't know because I wasn't primarily dealing with Mr. Brown?

A Who were you dealing with?

A Myself.

Q And you felt dealing with yourself was superior to the whole administration of the school?

A No.

Q You believed your feelings were paramount?

A No.

You explain it?

A I felt I was exemplifying my human rights and my constitutional rights. That second morning of December 12th I felt I should as best I could still continue to try to respond and act, had not I been under the pressure that I was under, I should not modify or nullify or anything to my original conviction as to the pressure I faced, as against my legal and amiable rights as a citizen.

Q And you felt as a citizen you didn't owe him, owe them any explanation?

Mr. Neuborne: He owes no man the obligation of seeking permission before he expressed is constitutional rights.

Q Okay, is that the way you want it to stand?

A Right.

Q And certainly you felt just as determined about the Vietnam War in the period between the first and second Moratorium Days as you did on Moratorium Day?

A Right.

Q But you didn't wear the armband during that period?

A That's true.

Q So you wore it only when the gatherings took place in Washington and all the other cities?

A Right.

Q So your action on war was part and parcel with this out-bounding of feeling against the action of this administratio: is that correct?

A I didn't say that.

Q Well I'm asking you?

A The action against the Administration, those people were sincere with whom I considered myself a part, not people going along for fun, or so called foul travelers, they we coming for a chance to express their feelings, but there was feeling, I was no child, I had been through quite a bit of experience, and this decision was made on experience and lots of things.

Q But you...

A This date was set by the Peace Movement, it did not come out of an anti-meeting, these dates were set.

Q On this second time you again had a discussion with Mr. Pillard and Mr. Brown as outlined in your testimony, did Mr. Brown mention some alternative suggestions open to you?

A On the second conversation we had, Mr. Brown said there were no alternatives available.

Q Well he outlined them to you and you determined not to take any?

A Any alternative they sought through the Teacher's Association which had censured me, they would not listen to my appeal only the faculty, legally they did exist, but they were not open to me.

Q You didn't trust them?

A I didn't trust them, there was no indication that any change had taken place.

Q Were there other alternatives Mr. Brown mentioned?

A I don't recall.

Q Did he suggest that perhaps you go back to work and when your rights....

A Give up until somebody determined them, I would have diametrically objected.

Q He sought a solution to you as hard as he could in his rights?

A I don't know how hard he was seeking, he definitely offered me legal alternatives.

Q If you sought them there was nothing he could do to prevent you so your objection wasn't the point?

Mr. Neuborne: You're putting your words in his mouth. Every

one Mr. Brown suggested required Mr. James to remove his armband.

Q Mr. James never claimed he wanted to wear the armband after, that's been pointed out, never. Now on the second day did you drive over yourself?

A Right.

Q Was any one with you?

A No.

Q Did you in any way, did you know a gentleman by the name of Jefferson Davis?

A Yes.

Q Were you in contact with him?

A The night before.

Q What was the conversation?

A He asked me if I was going to wear the armband, I said I didn't have the slightest idea.

Q Did you ask him if he was going to be in school the next day?

A He said probably he would be but I didn't ask him to be.

Q Did you have occasion about this time to call Mr. Anderson who was then President of the Board?

A I don't know whether my original communication with him, I think it was by phone, I said I was interested in attending the meeting.

Q And then you changed your mind by letter, you did call him and said you were coming to the meeting?

A He asked if it was possible.

Q And of course he said you would be welcome didn't he?

A I don't know whether he said that on the phone or in the form of a letter.

Q By some form of communication it was indicated you would be welcome to a meeting of the School Board?

A Yes.

Q And you wrote your letter in which you said you would not attend?

A Yes.

Q You have received formal training for the teaching profession?

A Right.

Q What school was this, was that in Mansfield?

A My educational experience came later at Temple and the State University at Oneonta.

Q Is it a fair statement that objectivity in the role of a teacher was stressed?

A I don't really recall objectivity being stressed.

Q Wasn't it ever mentioned?

A The teacher had responsibility...

Q To present a fair presentation of all matters?

A It seems almost inevitable what happened in my class. I was an English teacher there causing rather than objectivity, the awareness or lack of the awarness.

Q Certainly one of the things stressed was to avoid partisanship in any matter most of all political matters?

A I'm trying to be honest if I can, I just don't recall the question of partisanship coming up.

Q It was never mentioned you should avoid political idealogy in class?

A Avoid closing the door but to avoid a statement of opinion I just don't recall. I never experienced either by they way inall my English teaching.

Q In any of your training to be a teacher was there ever a discussion of what happened in Communist Russia, Nazi Germany or Facist Italy?

Mr. Neuborne: I object to that question, what do you mean what

happened in Communist Russia, what are you talking about?

Q When a student is taught only one ideal or only one aspect of Government.....?

A The exact opposite of what happened, an opposite to that government according to what you've been saying.

Q Was it ever taught to you that care should be taken to express all points of view on any particular issue?

A Surely, on all matters not just a political issue.

Q Is there only one interpretation to any political ideal of course not is there?

A No.

Q Now are you a member of the New York State Teacher's Association or whatever?

A Yes.

Q Do you subscribe to it's Code of Ethics?

A I don't know whether it's changed, I use to be on the Ethics Committee whether it's been revised, what I'm trying to say I know about New York State Teacher's Association I was never a member until I came up-state.

Q Do you agree in the Code of Ethics that the teacher should refrain from using the school to promote personal views on religion, race or partisan politics?

A Is promote a synonym of expression?

Q How do you define what promote means?

A I'm asking.

Q To express a personal view?

A I think the teacher has the right to express... Promote then means to work and go out and procure and try to corral, I disagree and agree with the Code of Ethics, it differs between what I believe and you should believe.

Q As expressed in the Code of Ethics? To refrain from
A using the school to promote personal views on religion, race or partisan politics, then you agree with that statement?

A I believe the teacher has an ultimate right to an opinion but has no right to try to seek other people to try to agree.

Q Then you do agree?

A That's all I can say, I just don't know what they mean by it, I know what I mean.

Q You don't know what the word promote means?

Mr. Neuborne: I would instruct him not to answer, I think he adequately did.

Q Do you agree with the statement in the Code of Ethics that in fulfilling his obligation to the student, the educator

shall not, without just cause, restrain the student from independent action in his pursuit of learning and shall not without just cause, deny the student access to varying points of view?

A Yes I do, I'm in a situation, I was restrained and so the student was restrained by my being removed.

Q Do you agree with the statement that the educator shall not use institutional privileges for private gain or to promote political candidates or partisan political activities?

A Yes.

Q And do you agree with the statement that the educator shall not use school time or school premises for partisan activity and that the use of the school for such partisanship or political activity is improper?

A Right. I would say true of partisan religion activity too.

Q Did it come to your attention that a memo was sent, as the observance of Vietnam days started, to the various schools, I'm referring to Mr. Johnson's memo?

A I know of it's presence, I don't know when it was called to my attention.

Q Was it before the second wearing of the armband?

A Yes it was, you had a faculty meeting did you not?

Mr. Pillard: Yes.

Q So you were aware of that memo before at least the second wearing of the armband?

A Yes.

Q And did you get a copy of the memo?

A I saw the letter.

Q Did you read it?

A Not before I wore the armband.

Q Where.....

A It doesn't make any difference I would have worn it anyway.

Q The first time but certainly you were aware of it before you wore it the second time?

A I also was aware of the interpretation of its purpose.

Q Did you read the statement by Assistant Deputy Commissioner Johnson, the chool posture should be neutral and objective?

A Yes, I'm not sure what school posture means, does he mean the school as sybolized by the Board of Education or

the Administration?

Q As a teacher don't you consider yourself part of the school administration?

A That's not what I asked, I don't understand what he means, what do you think he means?

Q Administrators and staff members should avoid taking any position on a controversial matter which may reflect on the objectivity of the school, did you read that?

A Yes.

Q Do you agree with that statement?

A Yes.

Q Do you feel....

A I agree with it in general, I don't agree with it completely.

Q By wearing your armband you took a position on a controversial matter?

A As I said before, that I realize the interpretation of my wearing the band could be political.

Q You realized your action might be interpreted as being contrary?

A Yes.

Q If controversial statements are to be made by

others, efforts should be made to assure that all sides of the question are given appropriate attention, do you agree with that observation?

A Sure.

Q And did you feel by you wearing the armband this followed that observation?

A Definitely, I was very aware of the fact questions could be raised.

Q After you were dismissed did you make an effort to get a job?

A That kind of question....

Q You made an effort to secure a job?

A Right.

Q What was the nature of your efforts?

A I applied to the Elmira Psychiatric Center, I applied to other school systems in the area.

Q How many?

A Elmira, Horseheads, Corning. And I applied to several

Q other school systems too.

Q What were they?

A I wouldn't know without going back, and because I had done Welfare work I also applied to the Welfare Department

in Elmira.

Q What job did you secure?

A I did some part-time work for a plumber.

Q Who's t he plumber?

A Warner Sally.

Q Yes?

A I did some substitute teaching.

Q Where?

A Namely in Horseheads, once or twice at C.F.A., twice I think.

Q What else?

A Well some part time teaching for the Department of continuing Education.

Q Where?

A Corning Community College. Of all, except one course, was summer work, there was one other day time, part of the work for Mr. Sally was night work too.

Q It's agreed that you will supply me with a statement of his earnings, a copy of his W-2 and a copy of the years income tax.

Mr. Neuborne: To the extent that it hasn't been thrown away. Mr. James will be available for cross-examination if you wish.

Q What teacher put on his board or something, Peace with Honor?

Mr. Neuborne: Hold it. (Off the Record Discussion)

A Mr. Blowers.

Q What does he teach?

A Science.

Q And when did you first notice that slogan?

A When I was suspended.

Q The first time?

A I don't remember. Probably, yes, most likely. I don't recall who, somebody said to me, I could probably narrow it down to within three people, did you see the thing on Mr. Blower's bulletin board and I said no. And the response was well it seems to me the same kind of situation as yours because he has a bulletin board that says Peace with Honor.

Q Did you see it personally?

Mr. Neuborne: To our Information and belief, we will produce eye witnesses that saw it I assure you.

Q Do you remember when it was called to your attention?

A No. I just know it was after I wore the armband the first time.

Q Someone told you about it?

A Yes.

Q But you were in the school approximately a month after that, and you didn't go over to the Science Room and take a look for yourself?

A No, I'm not the investigative type. As far as I'm concerned he had a perfect right to have that on his board, he would also be protected by the first amendment as far as I was concerned.

I HEREBY CERTIFY this to be a true and accurate transcript to the best of my ability, of the minutes taken by me on the 26th day of March, 1973 in the City of Corning, New York.

Joan C. Blank

Joan C. Blank

Examination Before Trial

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Charles James vs The Board of Education of Central District No. 1, of the Towns of Addison, et al.

Signed_____

Date_____

DEPOSITION OF KENNETH B. CLARK TAKEN ON JUNE 28, 1974.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CHARLES JAMES, Plaintiff, | : | |
| vs. | : | Civil No. 71-164 |
| THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 of the towns of ADDISON, AMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, District Principal, Central School District No. 1; CARL PILLARD, Principal, Addison High School and ROBERT ANDREWS, President of the Board of Trustees of Central District No. 1, Defendants. | : | |

June 28, 1974
3:30 p.m.

Deposition of KENNETH B. CLARK, taken by Plaintiff pursuant to notice, at the offices of Metropolitan Applied Research Center, 60 East 86th Street, New York, New York, before Florence E. Parrella, a Certified Shorthand Reporter and Notary Public of the State of New York.

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APPEARANCES:

BURT NEUBORNE, ESQ.,
American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016
Attorney for the Plaintiff.

HARRY TREININ, ESQ.,
11 East Market Street
Corning, New York 14830
Attorney for the Defendants.

Also Present:

Mr. Edward J. Brown.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that signing, sealing and filing are waived, and that all objections except as to the form of the question are reserved to the time of trial.

- - -

K E N N E T H B. C L A R K,

being first duly sworn by the notary public herein, was examined and testified as follows:

MR. NEUBORNE: I would first like to note for the record that this examination of Dr. Clark is taking place pursuant to a notice of deposition served on Mr. Treinin, and that Mr. Treinin, representing the defendants, is present and intends to cross-

examine Dr. Clark.

The case is Charles James vs. The Board of Education of Central District No. 1, Civil Action 71-164.

Pursuant to Rule 32 of the Federal Rules of Civil Procedure, Plaintiff intends to offer Dr. Clark's testimony as direct evidence in the presentation of his case in the trial, which is currently scheduled for July 9, 1974.

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DIRECT EXAMINATION

BY MR. NEUBORNE:

Q Dr. Clark, could you please give us your name, your address, and your occupation for the record?

A I am Kenneth B. Clark. I reside at 17 Pinecrest Drive, Hastings-on-Hudson, New York.

My office is at the Metropolitan Applied Research Center at 60 East 86th Street. I am the president of the Metropolitan Applied Research Center, and I am a distinguished professor of psychology at the City College of the City University of New York.

Q How long have you been professor of psychology?

A. I have been on the faculty of the Department of Psychology since 1942. I think I have been a professor since 1960. I am not absolutely sure of the exact date.

Q. Without meaning to embarrass you, does the term "distinguished" professor have any connotation? Is it a special --

A. It is a special designation of, I think maybe somewhere between 20 and 30 professors of the City University.

Q. Are you a member of the Board of Regents of the State of New York?

A. In fact, I am a member of the Board of Regents of the State of New York, and I have just returned 15 minutes before these gentlemen arrived.

Q. How long have you been a member of the Board of Regents?

A. I think this is my eighth year.

Q. And generally, what are the functions of the Board of Regents of the State of New York?

A. The Board of Regents of the State of New York has been in existence since 1784; without question, the oldest educational governing body in the United States. It is charged with the responsibilit

of determining the policy and rules and regulations governing education at all levels in the State from nursery school through graduate professional schools. It also has the responsibility of monitoring the ethical behavior of professionals in all professions with the exception of law.

Q Dr. Clark, in your studies in psychology, have you specialized in any particular area of psychology?

A Yes, I have specialized in the general area of social pyschology, developmental personality with particular focus on the effects of social environmental factors on personality development of human beings.

Q Have you conducted any studies concerning the effects of educational practices upon both the learning process and children involved in the learning processes?

A I have written extensively on that. In fact, practically every book I have written has focused on the importance of educational practices, the organization of educational institutions, on self-image and effectiveness in children. My first book put a great deal of emphasis on that, but with

particular focus on race and racial factors and education.

Q How many books have you written, if you can remember?

A. Does that include editing?

Q. I think so for the purposes of this record.

A. I would say about seven.

Q. And have you received any honorary degrees?

A. Yes.

Q. Where did you receive honorary degrees?

A. Princeton, Columbia, Haverford. I think I received a number of honorary degrees.

I learned not so long ago of someone who was making a policy of not accepting honorary degrees, and I am beginning to think that that might be a pretty wise policy.

Q Dr. Clark, from your experience in studying the impact of education practices on individuals and the impact of educational environment on the development of children, do you believe that you would be able to pose an opinion concerning the wearing of a black arm band in a high school English class by a high school English teacher?

A. I could.

Q You have no first-hand knowledge of the incidents of this case; you were not at Addison in 1969?

A No, I have no first-hand knowledge of this particular incident, and I do not know this particular person or situation.

Q And the testimony you would be giving would be testimony based upon your studies of the field and opinions you would have formed through your years of research and study?

A Yes, as a psychologist and as a person who is interested in education and society.

Q I think I forgot to mention it, and I suppose by now you must be tired of hearing it, but your contribution to Brown vs. the Board of Education was noted in the Supreme Court as an educational psychologist?

A Yes, in Footnote 11.

Q Now, Dr. Clark, if you will assume with me for a moment the following facts, I would like to ask you a question based upon those assumed facts.

Assume for me a teacher, teaching high school English to 16 and 17 year old students, juniors in high school. Assume for me that on the moratorium

days that took place in October and December 1969 - do you recall those moratorium days?

A. I do generally. I don't recall the specific days, but I recall that period.

Q. And you recall they were days of protest and concern against the war in Vietnam?

A. Yes.

Q. You recall the general tenor of the country at that time?

A. I recall quite vividly.

Q. Assume for me that on those two moratorium days, an English teach in a high school were to wear a black arm band on his sleeve as an expression of his aversion to killing in Vietnam; and assume he were to wear that arm band into his English classes in which there were students, 15, 16 and 17 year olds studying.

Assume he were to make no statement concerning the arm band, and assume that the students did not appear to be offended by the arm band, and that no physical disruption of the school occurred in connection with the arm band. Would the wearing of the arm band itself create the danger of disruption of the educational process?

MR. TREININ: Of course, under the circumstances, the doctor would be asked this question after your plaintiff had been testifying, so just as a matter of protection of the record, may I put in a general objection that it is assuming facts not proven, and leaving out certain facts that were proven, so that I protect the record.

MR. NEUBORNE: And let the record show that it is the intent of the plaintiff to place in evidence the hypothetical facts which have been placed before Dr. Clark.

A. On the basis of the set of assumptions which you stated, and, Mr. Neuborne, I would ask whether it would be possible for me to state another assumption --

Q. Surely; I think it is important that we know the assumptions.

A. The assumption that the wearing of the arm band, not only in terms of protest, but probably the possibility of mourning could be one of the assumptions of intent; I would say it is my considered judgment that I just cannot coneive of this being in itself a disruptive force or factor.

Q Would it create an inherent psychological disruption in the minds of the students who viewed the arm band?

A Mr. Neuborne, I could no more conceive of that fact as stated by you with the assumptions which you state creating any inherent psychological disruption any more than the fact of the teacher wearing an American flag in the lapel creating a disruption, or a teacher wearing a cross on a chain, or a teacher wearing a cross of David on a chain. I do not see that any of these symbols of an individual's concern, displayed in the usual way by teachers, could in themselves create any inherent psychological disruption.

Q Would you think, sir, that wearing such an arm band would materially and substantially disrupt the work and discipline of the school?

A Certainly not in itself, any more than those other symbols which I stated could in themselves so disrupt.

Q And I take it that you would not think that it would create a threat to disrupted classroom activities?

A I restate my original answer, that the use

of symbols by certain human beings to express certain forms of identification or certain types of concern is not at all uncommon in our society.

I would like to call your attention to the fact that the President of the United States uses an American flag in his lapel on television, and certainly no one would ever suggest that this is a device or disruptive thing in itself.

Q I take it, though, you would agree with me that if the teacher became coercive or intimidating, or attempted to proselytize the students --

A Those facts themselves would be the disrupting thing, not the symbol itself.

Q And the absence of evidence that the teacher was attempting to be coercive, attempting to proselytize the students or intimidate the students, simply wearing the arm band would not be a disruptive influence in the school?

A Yes, but I would beg your permission to formulate it in a more affirmative way, that if the symbol is used as a basis by which a teacher exploits an authority position at intimidating or coercing or in any way psychologically oppressing the student, then certainly it would seem to me that any reasonable

person would have to say that would be disruptive and would be questionable behavior on the part of a teacher.

Q But in the absence of evidence that the teacher was using the symbol in that way, you have no objection to the symbol on either educational or psychological grounds?

A Not only would I not have any objection, but I would think that this is within the rights of the human being.

Q Dr. Clark, in an earlier phase of this case, the Commissioner of Education ruled that Mr. James ought not to have worn the arm band because it posed only one side of the issue that was before the nation in October and December of 1969. In simply expressing his own personal views in a non-coercive and nonintimidating manner, do you believe that Mr. James was acting in a manner which would deny his students access to all points of view?

MR. TREININ: I am going to object to that on the record.

A I must preface my response to that by saying that I am responding here now not in my official capacity as a member of the Board of Regents, before

whom could come an appeal - although the Commissioner, according to the law, has certain quasi-judicial powers which are not subject to review by the Board of Regents - but I do think it is important and proper that I make clear for the record that my response to this is to be dissociated from my role as a regent, and to be understood only in terms of my role as a psychologist.

Given that context, I would say that I would not agree with anyone who would say that the mere wearing of the arm band itself is one-sided or blocking students from other sides of the question.

On the contrary, it seemed to me absolutely no reason why this symbol could not just as soon be interpreted as having some of the students be more concerned with an opposite point of view.

I think, for example, to go back to my example of the President of the United States wearing the flag in his lapel, my response to that was not to be more identified with the President of the United States, but that symbol itself raised in my mind the question of the advisability of the President using that symbol in a way, I would say to myself when I would see this, that the American flag covers a variety

of points of view, and the President of the United States maybe should not seem to give the impression as if it covers only the point of view which he represents.

So I think what I am trying to say to you, Mr. Neuborne, is that the symbol could do the very opposite of propagandizing or intimidating. It could arouse the person to say: Well, you know, maybe there is another point of view here.

Q One final question, Dr. Clark. To sum up your views, if one assumes that Mr. James did not attempt to coerce the students or attempt to proselytize -

A Overtly.

Q -- overtly the students, and simply did nothing more than wear the arm band silently, and then go about his teaching duties, do you believe that his actions were potentially disruptive of the learning process?

A Mr. Neuborne, I thought I answered that, and my answer to that is an unequivocal no.

MR. NEUBORNE: I have no further questions.

CROSS-EXAMINATION

BY MR. TREININ:

Q Dr. Clark, may we put ourselves back in the

time about November 12, 1969, if we may?

A Yes.

Q Of course, at that time the Vietnam war was in full force?

A That is right, and protests.

Q And shortly before the election, President Johnson had literally been hounded from office by the storm of protest against his conduct of the war - put it that simply; is that correct?

Riots on campuses were, sad to say, almost an everyday occurrence?

MR. NEUBORNE: I will object to that, but you can go ahead.

Q They were very common; is that right?

A There were protests. I participated in some of them.

Q The country had to suffer the trauma of the assassination of President Kennedy, of Senator Kennedy and then Dr. King. Literally, cities in America were burning; is that correct as a general statement?

We had had the riots --

A It was a period of intense feeling, no question about it.

Q And, as a matter of fact, on that date, the

trial of the Chicago Eight, or later seven, was going on with all the effect that that had in front of Judge Hoffman; is that right?

A. Yes. I will concede it was a period of great tension and emotion.

Q. In fact, the National Guard had been called out in Chicago. So that when the moratorium was announced, it was really at the time of a nation divided. Is that literally a correct statement?

And would it be fair to say that it was the worst division we had suffered since the days of the Civil War?

A. It was a nation in anguish, no question about that. I don't know that I would use the word "divided", but it was certainly a time of torment and anguish.

Q. Politically, socially?

A. Morally.

Q. So that when a black arm band was worn in the context of those times, it had a meaning to the general public; is that correct?

A. Unquestionably.

Q. And what was, in your opinion, the meaning of that arm band as it was worn in the context of

those times?

A. Mr. Treinin, to me, I would see an arm band worn at that time as an expression of deep concern about the predicament of our nation.

Q. And would you also consider it as an expression of opposition to the conduct of the war?

A. I would consider it an expression of opposition to the continuation of the war in Vietnam, yes, I would.

Q. And would you also say it was a general expression of opposition to what we have come to call the Establishment, whatever that may be?

MR. NEUBORNE: That is awfully vague.

A. I think I would restrict my answer to the arm band, given the fact of what had earlier been a fairly common practice for individuals in mourning for someone close, a family member, who had died, to wear an arm band, and that practice has decreased, although it is not totally eliminated. Seeing someone wear an arm band at that time that you describe, I would interpret it as a very deep concern about the continuation of his nation in what he would consider an immoral and indefensible war.

Q. And the focus of that protest was against

the so-called Nixon Government; is that correct?

A The focus of that protest was against the nation that used its power to continue the killing of people in South Vietnam.

Q And it was against the United States Government as it was carrying out its then policy in reference to the war?

A Mr. Freinin, the fact that you formulate the question that way, if you will pardon me, takes me beyond the restricted role of giving testimony here, and requires me really to express my own philosophy here.

Q I am asking you for your philosophy.

A Actually, my own philosophy is that it really was not a protest against the Government as such, because my own opposition to the Vietnam war, aside from the fact that I am opposed to killing human beings, is that this was not a war that was being conducted in the usual constitutional provision for the conducting of a war; that actually my own interpretation was that it was a usurpation of written constitutional power on the part of three executives: Kennedy, Johnson and Nixon.

So when you formulate the question in terms

of protest against the Government, my personal response would have to be no, it was protest against the distortion of the governmental processes, which to me clearly stated as to whether this nation should or should not be in war.

Q And at that time as exemplified by Mr. Nixon's policies?

A That is right.

Q At that time?

A That is right, but prior to that, as you so clearly stated --

Q Mr. Johnson and Mr. Kennedy?

A That is right.

Q So in effect it was a symbol of protest against our Government?

A That is right, and a symbol of protest against the perversion of the constitutional democratic processes.

Q By our Government?

A By the Executive Branch of the Government, and, by the way, I think Mr. Fulbright makes that point or made that point very clearly.

Q So that is it a fair statement to say that in the context of those times and the context of your

statement now, that the arm badn had a political significance?

A. A political, but to me it would be more accurate to say a deep moral significance, and certain moral concerns obviously have political implications, surely.

Q. By the way, when did you first know about this case, doctor?

A. I think about three or four weeks ago; I am not sure.

Q. Th James case as such meant nothing to you either as an individual or as an official?

A. I had not heard of it prior to being told about it in regard to whether I would be willing to give this testimony.

MR. NEUBORNE: Any record should reflect, of course, that Dr. Clark has received no compensation.

MR. TREININ: I wouldn't dare ask that.

THE WITNESS: I would never accept it.

MR. NEUBORNE: I know; that is why I wanted that on the record.

Q. Doctor, are you aware that the upcoming moratorium days in October and November of 1969 caused some concern in the educational establishment of the

State of New York?

A. I am not sure that I am aware of that or was aware of it at the time, and, by the way, if I had been aware of it, I would be opposed.

Q. Opposed to --

A. To any concern or interference on the part of educational officials in the private concerns of teachers, principals. But I was not aware of that.

MR. TREININ: Would you please mark this.

(Letter on the letterhead of the University of the State of New York, dated November 3, 1969, marked Defendants' Exhibit A for identification.)

xxx

Q. Doctor, may I impose on you to read Defendants' Exhibit A (handing)?

A. I have read it. I have never seen his before.

Q. I understand that. Turning to page 2, do you have an opinion as to whether the material in paragraphs 3 and 4 are educationally sound?

A. I would be concerned about 3 and 4 if I were an administrator; or let me quite candidly say that in my role as a professor, I would consider any such communication to me as a professor now - and it may be that I should make a distinction between

professor and a high school teacher or an elementary school teacher, although I don't know on what ground - I would consider such a communication gratuitous, presumptuous, and in my own case, difficult to comply with because I do really consider my role as a professor that of communicating to my students the totality of my being, and I would not accept the position in which these would be requirements and commitments asked of me because I know I would not be able to fulfill them.

Q In your answer, doctor, you used the phrase, "in my role as a professor."

A Right.

Q That means a professor in a college?

A Right.

Q In a postgraduate school perhaps?

A No, undergraduate.

Q And do you draw any distinction between the role of a teacher in the high school and the role of a professor in a college?

A I know that people do. I personally don't. In looking back on my own high school education, I must with all due respect say that the teachers who had the greatest impact on me were teachers who communicated to me not only the specifics and the facts of subject

matter, but the moral and the human context within which those facts made sense.

I mean, I had a teacher in George Washington High School who taught me English, but she didn't only teach me English. She taught me concern for human beings as they were expressed in literature, and someone else listening to Mrs. Chapin could I guess with some justification say that she was controversial because she had a point of view. She believed that decency and justice and concern for one's fellow man were the essentials of civilization. I have never forgotten her. She would not have met literally the requirements of 3 and 4 here, thank God.

Q And you realize there is considerable writing in the educational field to the contrary, that disagrees with you?

A Unquestionably, and I think so much the worse.

Q But it is a respectable body of opinion?

A Unquestionably, and I must tell you, Mr. Trein that I have written, and I have two articles in the American Scholar, which go directly against this in which I say that the problem with our young people today is that our educational institutions have failed

them in the area of moral and ethical concerns. I am sorry, but this hits very close to home.

Q So you disagree with the action taken by the Deputy Commission for Elementary and Secondary Education on November 3, 1969, when he sent out this memorandum to all the schools?

A I not only disagree, but I must say to you, Mr. Treinin, that if this had been brought before the body, I would have taken a contrary position.

MR. NEUBORNE: And by "body," you mean the Board of Regents?

THE WITNESS: Yes, sir.

Q On the other hand, you do recognize that when this was received in the field, the administrators of the various schools felt that they were bound by its terms?

A Barring any objections from them, I would assume so.

Q That they were bound by it; after all, it came down from the Albany office; is that correct?

A They would not be bound to accept it without question. It seemed to me that they should raise questions. There is a matter before us now on the advisability of separate dormitories for black and

Puerto Rican students. The college presidents, many of them, are raising questions about it.

Q Of course, you are addressing yourself as a professor in a college?

A Yes, a professor and an educational philosopher or busybody.

Q And it is in that context that you are making these answers?

A Absolutely, and of course in the context of my personal point of view as a citizen. I don't want to hide behind as a professor or anything because actually we bring to our professional roles ourselves, and I try not to mislead people about them.

MR. TREININ: Would you mark this as an exhibit please.

(Booklet entitled "Codes of Ethics Their Interpretation and a Bill of Rights for Teachers" marked Defendants' Exhibit B for identification.)

xxx

Q You have stated, sir, that you are glad to espouse the teaching of moral and ethical standards in the schools?

A In fact, I believe that is a responsibility of our teachers.

Q But of course teachers are human beings,

and they differ as to their moral and ethical standards?

A. No question.

Q. And we might have a Mr. Colson, a teacher before his reformation, and Mr. Colson, a teacher after his reformation?

A. Yes.

Q. So that moral and ethical standards are not necessarily objective standards?

A. Absolutely, and I would also say that I would stop short of any teacher using his position as a teacher and his authority in a sort of subtle force of power to attempt any kind of political indoctrination or any sectarian indoctrination among students. I want to make that clear. When I talk about moral and ethical standards, I am talking about a broad spectrum of man's responsibility for his fellow man, including tolerance of differences.

Q. May I call your attention to paragraph 4 on page 8 of the Joint Code of Ethics, which at that time was published by the New York State Teachers Association, and was put out together with the School Boards Association, as I recall, and especially where it reads:

"The teacher and the school board recognize their obligations to develop growing appreciation and understanding of the principles of democracy; they refrain from using the school to promote personal views on religiion, race or partisan politics."

Do you agree with that?

A. I certainly agree that a teacher should not use a position to promote personal views on political, regligious or racial matters, yes, and at the same time recognizing that sometimes the line between personal views of that sort and the exploitation of and sensitizing students to moral and ethical concerns is not always that distinct, but certainly that is a responsibility with a teacher, to try to monitor himself and herself.

Q. Quoting from page 10, The Code of Ethics of the Education Profession:

"In fulfilling his obligation to the student, the educator --

"Shall not without just cause restrain the student from independent action in his pursuit of learning, and shall not without just cause deny the student access to varying points

of view."

Do you agree with that?

A. I certainly do.

Q. And do you have an opinion on paragraph 2:

"Shall not deliberately suppress or distort subject matter for which he bears responsibility."

A. Without question.

Q. And on page 11:

"In fulfilling his obligation to the public, the educator --

"Shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities."

MR. NEUBORNE: I might say that applies to the administration as well.

MR. TREININ: This was the administrator.

MR. NEUBORNE: But I take it the administrator would take similar responsibility.

MR. TREININ: I think anyone connected with the school system.

Q. "Shall not use institutional privileges for private gain or to promote political candidates or partisan political activities."

A. Unquestionably. I would consider that not

only a breach of ethics, but a personal and professional crime.

Q Did you use the word "crime"?

A Yes, to do what you just said.

Q Then on page 17, No. 28:

"The professional teacher recognizes that insubordination is unethical."

MR. NEUBORNE: I will object to that. That is out of the case. The Second Circuit has taken it out of the case.

MR. TREININ: We have to determine whether the first incident was insubordination, Mr. Neuborne.

MR. NEUBORNE: If it was, then he is fired for that. He is not fired for the insubordination, so this is irrelevant, and you are just taking up Dr. Clark's time.

MR. TREININ: I don't mean to.

Q "The professional teacher exercises good judgment in political activity. He properly may urge friends and acquaintances to support a school bond issue or to vote for candidates in any election. The use of school time or the school premises for partisan political activity is improper."

A Mr. Treinin, I told you that I am opposed

to teachers, I am opposed to professors, opposed to government officials and administrators using their power to impose a particular partisan political or religious view, but I would have to make very clear to you and to others that this cannot be by inference. This must be clear acts and repeated use of power to impose partisan points of view upon students.

MR. NEUBORNE: Would the wearing of the two black arm bands on the two days in question constitute --

THE WITNESS: In my opinion, as I stated to you, Mr. Neuborne, absolutely not, any more than wearing the Star of David or a cross would in itself. Now, I can conceive of a teacher using a symbol and then haranguing on the basis of that symbol. I could even conceive of a teacher using a symbol worn by a student as a basis of psychological coercion and intimidation, and I would not argue that that teacher had a right to do that. In fact, I would argue the contrary, that no teacher had a right to intimidate or to --

Q What is your opinion of, say, a nun who happens to be hired in a public school, wearing her garb?

A. I would be concerned about that, and I must be quite honest --

Q. Why do you feel there is a distinction?

A. Because I think that the -- my interpretation of the church-state issue as related to public education would make me believe, subject to discussion and argument, that the use of clear religious garb or garment might justifiably be considered, in a public school, an infringement on the church-state distinctions. I think the same thing for a Protestant priest.

MR. NEUBORNE: How about a yalmaka?

THE WITNESS: I don't know.

MR. NEUBORNE: A crucifix on a chain?

THE WITNESS: A crucifix on a chain I think is so --

MR. NEUBORNE: Star of David?

THE WITNESS: Or Star of David, but I do believe, as Mr. Treinin said, I would have serious consideration about a habit or a clerical garb, which is generally understood as indicating primarily identification with a religious position over periods of time, yes.

Q. Would you comment on this statement:

"It is a matter of fundamental educational

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policy that whatever subject of instruction may be involved, the teacher must present the entire range of information available in relation to such subject."

Do you agree with that statement?

A. That to me is a very wide statement and not likely to be fulfilled in application as easily as it is stated in words.

Q. Do you agree with it as a matter of sound educational philosophy?

A. Only to the extent that it is verbal. I feel that way about every book I write, that it should cover all aspects of the problem I am writing about, and there isn't a book that I have ever published, written or published, that is not deficient.

Q. Do you agree with that statement, doctor?

A. I don't think that that statement is possible literally, in literal application.

Q. As a matter of educational philosophy, do you think it is desirable?

A. Repeat it.

Q. "It is a matter of fundamental educational policy that whatever subject of instruction may be involved, the teacher must present the

entire range of information available in relation to such subject."

A. If you will really understand me here, I am going to say that those are the kinds of words that generally in their excitement, adults use and write, knowing full well that in application, it is not possible.

Q. It is certainly an ideal to be sought after?

A. It is an ideal.

Q. It is a commendable ideal?

A. For example, in seminars where you take a single aspect of a subject matter and try to give all sides of it, I have never conducted a seminar in which I ever felt that that ever occurred.

Q. But in the context of an 11th grade English class, and when there are two accepted points of view on a subject, and if the teacher presents one point of view, would you expect him as a good teacher to present the other point of view?

A. I don't think there is any question, but I don't believe that there is any subject in which there are just two points of view.

Q. I agree with you. Would you make an attempt

to present all points of view that are known?

A. Of course. You have to pardon me because I wish I could give this without being constantly reminded of the fact that I am a teacher, and that I am trying to be as honest and candid as I can.

Q. Let us take the question of opposition to the method of performance by the Executive Departments in the Vietnam war. There were some who were opposed to it?

A. Right.

Q. And there were some who were in favor of it?

A. Right.

Q. Is that correct?

A. And there are some who changed.

Q. And some who changed over the time?

A. Yes.

Q. Would it be reasonable to ask a teacher who presented one point of view in that regard to say that others have another point of view?

A. If this is a matter of discussion, I would think that a conscientious teacher first would make the issue as clear as he or she could; second, would give the different approaches to the extent that he or

she could; third, and equally important, should not attempt to mislead his or her students as to his own position, and how and why he arrived at his position. This to me is a very important part.

Q Very important?

A Yes.

MR. NEUBORNE: Was Mr. James ever requested to --

MR. TREININ: Please, may I examine?

Q May I have your comment on this statement:

"If the subject matter involves conflicting opinions, theories or schools of thought, the teacher must present a fair summary of the entire range of opinion so that the student may have complete access to all phases and facets of the subject."

Do you find that that is good educational philosophy?

A Verbally stated, yes. In terms of literal application, it is extremely difficult, if not impossible.

Q And as an ideal to be sought after, certainly we should seek it?

A Yes, just as the Judaic-Christian goals of the brotherhood of man and responsibility for his

fellow man, and very important ideals.

Q. So there is no quarrel with that statement from your point of view as an educator?

A. Yes, there is only one question I really want to raise here because Mr. Neuborne's statement on this incident may have been incomplete, but at no time did he say that this was a teacher that was discussing this issue.

MR. NEUBORNE: No, the teacher was teaching 11th grade poetry.

THE WITNESS: So these questions seem to me as if they were related more to the teaching of this issue.

Q. We will take that up in a moment. Now, if the wearing of the arm band did present a single point of view on an important issue, and you have informed us that you recognize that there was a wide range of deeply-held conviction and opinion on this issue, do you feel that it is a good educational policy to present only one point of view under those circumstances?

A. Mr. Treinin, I will have to go back to my original statements and unequivocal support of the right of a teacher to use a symbol within the bounds of good taste and to express a personal concern, and

your questions now require me to differentiate as clearly as I can that right from the involvement of the teacher in his or her professional role of communicating ideas verbally.

Q Or symbolically?

A Or the written word. If you are saying to me that this particular teacher was teaching a lesson in current affairs, you see, and dealing with or trying to help his students understand the nature of the unrest and in the context of American history and constitutional things, then I would consider the questions that you have asked me germaine and relevant, that that teacher as a professional should not teach that lesson purely in terms of his own ideology or his own point of view because he certainly would not be either professional or ethical.

But I must say with all due respect to you, that I do not consider the wearing of the arm band to be synonymous with teaching a lesson.

Q Now, doctor, would you tell us from an educator's point of view as to the role of an emblem? It is an idea; it expresses an idea?

A It is an expression of identification, or it is an expression of a concern, or it is an expression

of something that that individual considers important to him personally.

Q So we might use the old Chinese proverb, that one picture is worth a thousand words?

(Discussion off the record.)

A I will say that I do not think that in this situation that is presented to me, that that is an adequate analogy.

Q As a matter of fact, perhaps the symbol is more overpowering than just words?

A No, it is quite conceivable - in fact, my personal opinion would be that it would take a very astute student to be aware of the significance of that symbol.

Q In other words, are you telling us that the symbol had no meaning in the context of moratorium days?

A I would say this to you as a psychologist, that it is conceivable to me, and I would hypothesize, that the majority of students in that class would have no single idea as to the meaning of that symbol. For example, it is quite conceivable that many of the students could consider this a symbol of personal mourning; that there is no reason to believe that every

student in that class, or even the majority of students, would associate the symbol of a black arm band with Vietnam protest.

Q. Doctor, are we not forgetting the history and background of the organization of the moratoriums?

A. I must tell you, I teach and you would be surprised how students can be oblivious. I teach in a college and, believe me, I teach at one of the better colleges in this country, City College, City University, and you would be surprised at what percentage of my students do you think read the New York Times at the College of the City of New York?

Q. That is not necessarily the statistic that gives us the end-all and be-all of a good student.

A. You would be surprised at the number of my students who are oblivious or unconcenred or insensitive to Watergate. I must tell you, and that is a shocking thing.

Q. But there are students who aren't, who are different?

A. Right.

Q. So we have to consider them also, don't we? They are part of the class?

A. No question about it.

Q So to some students it had meaning?

A Of course. And to some the meaning could have been quite different from that which the person who wore it --

Q Intended?

A No, had as his meaning.

Q So in the context of the teacher in the classroom, do we have to consider what the teacher intended it to mean or the impact that it might have on the sutdent?

A Mr. Treinin, I believe that that question has no more direct pertinence to this use of a symbol than to any other use.

Q We will have to let someone else decide that.

A But that is my most honest answer to that question.

Q From the point of view of teaching, when you use a symbol or words, does a teacher use it from the point of view of what it means to him or the possible impact on the mind of the student?

A I just can't answer that question with any kind of confidence or seriousness with which you ask it because I don't know that anyone can in any way be sure

or guarantee how someone else is going to interpret it.

Q. But that should be a consideration ever-present in the teacher's mind, should it not?

A. I am not going to say that, sir. I really can't say that in all sincerity or honesty, a teacher who goes into a classroom with a chain and a cross around her neck can in any honesty say that she knows how her students are going to interpret or respond. The human mind is much too complex.

Q. In other words, we don't know what response there would be?

A. Absolutely, or what interpretation or how much significance or salience.

Q. But we do know that there will be a response?

A. Not necessarily.

Q. But certainly to many students there would be a response. From many students there would be a response?

A. One could legitimately hypothesize that X percentage of those students probably did not even perceive it.

Q. Some might be blind?

A. No, I am talking about the complexity of human perception.

Q. But considering the complexity of human perception, it had meaning?

A. To some it probably did.

Q. It might have different meanings to different students?

A. Quite.

Q. So it did have meaning?

A. Yes, but the nature of the meaning is what is --

Q. But it is something that the teacher should have considered when he wore the arm band?

A. That is where I am departing from you. I do not believe that that teacher should have given any more consideration to the possible variety of meanings or interpretation of his wearing of an arm band than a teacher who wears an American flag in a lapel, or any of the other symbols.

Q. May I have your opinion as to whether or not at the very least, the arm band has a role in advertising an idea?

A. Oh, I don't think there is any question that the use of a symbol is communicating a concern or

point of view.

Q. And the use of the symbol is also sought to influence others?

A. Not necessarily.

Q. Then the Supreme Court misread the meaning of symbols in the Tinker cases, if that is the case?

A. I don't know. May I go back? I think that a person who wears a cross on a chain is not necessarily seeking to influence --

Q. But let us talk about this black arm band in the context of moratorium day.

A. May or may not be attempting to influence others. I must tell you that one of my deepest concerns during that period was the fact that I didn't find an adequate way of expressing my deep concern to me about this deep problem, moral problem; and if I found a way, I would tell you it would not be in a way to influence anyone else; it would be in an attempt to express my own anguish.

Q. Now, doctor, assume that this man wore the arm band on November 12th, and thereafter he received a letter from the Board saying, "We consider this to be a political act."

MR. NEUBORNE: Mr. Treinin, I don't want to

take up Dr. Clark's time, if you are going to keep on --

MR. TREININ: No, I am not.

(Discussion off the record.)

Q The Board said:

"The Board deems your action to be a political act. As such, it is prohibited in the school. It is, also, deemed unethical action on the part of a teacher to engage in such activity.

"You may return to class on Monday, November 17, 1969 with the understanding that you engage in no political activities while in the school.

"Of course, the Board recognizes fully your absolute right to express outside of the school any beliefs that you may have."

Thereafter, he returns to school. There is much publicity in the press, in the media, and on the occasion of the second moratorium, without any discussion with any school administrator, he again wears the arm band. Do you think then that it might have had an impact different than on the first occasion?

A. Mr. Treinin, I must say to you and to the Court that I cannot answer that question objectively.

Q. Why not, may I ask?

A. Because I would have to answer it in terms of my own personal set of values and my own personality. I will not pretend to you, to Mr. Neuborne, or to the Court, that I will be giving an answer to that question as a psychologist or in terms of my qualifications.

Q. In other words, it would be a purely subjective reply?

A. It would be a purely subjective reply, and I don't know what benefit that would be to you.

Q. I want to express my appreciation for your candor. Let us get back to arm bands.

Incidentally, in the history of our time, arm bands have played a significant role. There is the Communist arm band that has become well known throughout the world.

A. I didn't know that.

MR. NEUBORNE: What Communist arm band?

MR. TREININ: The red arm band.

MR. NEUBORNE: It is a new one on me.

Q. Certainly we are more acquainted with Mussolini's black arm band.

A. I didn't know that either. Didn't the Gestapo have one?

Q. I was coming to that next. We are acquainted with Hitler's swastika and his arm band?

A. Yes.

Q. Are we acquainted with the regalia and symbols of the Ku Klux Klan?

A. That was not arm bands; that was sheets.

Q. They have a significance in our history, don't they?

A. Yes.

Q. They have meaning?

A. You left out probably the most common use of the arm band, personal mourning.

Q. Which you told us was used with diminishing frequency.

A. I think so. I see much less use of it now than when I was a child.

Q. But these are all part of our background, the use of symbols; and will you dissociate the using of this symbol of the arm band and the history of the use of these arm bands?

A. In this instance? Unquestionably.

MR. NEUBORNE: I didn't get that.

THE WITNESS: He asked will I dissociate with the use of the arm band in the present case from the history and the context of use of arm bands, and I said yes.

Q Now, of course, since you feel that it is educationally good practice for Mr. James to have worn this arm band --

A I didn't say that.

Q Do you feel it is good educational practice?

A My personal opinion is that it is --

Q No, as an educator?

A As an educator, I don't think it is relevant, the educational aspects of it. I think it is his right as a citizen of a democracy to express by any appropriate means, and appropriate means within the bounds of good taste or reason, etc., a deeply-held concern; and I do not believe that educational officials have every right or responsibility to interfere with this.

Q Certainly you would not deny then to another teacher the right to wear an arm band representing any point of view?

A Without question. Now, I would personally be concerned about a teacher coming in with a swastika,

I really would.

Q You anticipated my next question.

A I really would, and there are certain symbols that --

Q And perhaps the Ku Klux Klan regalia?

A Without question.

Q Those also represent points of view to which, unfortunately, people are entitled?

A But I must say to you, the distinction I am making here, I am now talking as a psychologist, that an arm band without a symbol is to me - without an insignia - is to me quite different from an arm band with a clearly inciting, emotionally laden implication, such as a swastika. Or I might even add - and, by the way, I make a distinction between the right of the teacher and the student - a Confederate flag or something of that sort.

I don't know whether this supports or does not support the case, but to me these are --

Q We appreciate your opinions. But certainly all of these arm bands or swastika convey an idea?

A But there are ideas and ideas.

Q And, in other words, you certainly are against the Confederate flag symbol in the schools, say,

of a northern city?

A. A teacher who came in to a class with an arm band or a swastika or a Confederate flag, I, Kenneth Clark, would personally object to. On the other hand, I would understand if the New York Civil Liberties Union or the American Civil Liberties Union took that case; I would disagree with them, I would assert my right to disagree with them. I would argue as a psychologist that that is quite different from wearing a cross or a Star of David or an arm band without that kind of inciting insignia.

Q. Are you aware, doctor, that the polls indicated that approximately over 70% of the people of the United States supported the President during this Vietnam crisis, and can you visualize that perhaps to some people, the black arm band can be just as incendiary in feeling as the other arm bands are to people against whom they have meaning?

A. Yes, and then I would say, prefacing it with this a personal point of view, that the right of one person who had a deep moral concern about the Vietnam war should in no way be abridged; the right of that person to express his point of view by this sort of symbol should under no circumstances be abridged

because the majority of the people are in support of it.

Q Of course not, but the point is --

A And it should not be interfered with.

Q But they might take the same point of view towards that black arm band as a black man may take to the KKK symbol, or I as a Jew to the swastika?

A And I think that is why we have courts, and I think one of the very important functions of courts in a democracy is to make these distinctions and to tend to support them on the basis of reason or other.

Q And that is why we are here?

A Right, and I would tell you - and I have never said this to Mr. Neuborne - but if Mr. Neuborne had called me and said that this teacher whom he is seeking to defend went in with a swastika and asked me if I would give a deposition in support of this, I would have to say to him in all honesty, no.

Q Or a Confederate flag?

A Yes, and I think I would put the swastika way ahead of the Confederate flag because I could conceive of the Confederate flag as being almost an attempt at misguided humor. I could not conceive of

that with a swastika, and no teacher has a right to inflame.

Q Is it conceivable in your mind that someone who very strongly supported the Executive Department in its conduct of the war might be inflamed by the black arm band?

A I must tell you, in all honesty, I cannot conceive of somebody being inflammed. I can see somebody being annoyed. I can see somebody saying, now, look, he shouldn't do this; but that to me is quite different from falsely shouting "fire" in a crowded theatre.

Q The point is: Isn't it a fact that there were attacks on many of the demonstrators throughout the country?

A Sure.

Q So that people were inflamed by the espousal of the idea that the Executive Department was unlawfully and in an unholy manner conducting this war?

A And this in no way should abridge the right of this teacher to express his personal concern about a war which he considered unjust.

Q That is your opinion?

A That is my personal opinion.

Q Now, you would not deny another teacher the right to express another point of view, of course not?

A Of course not.

Q And in some schools I am told they wore red, white and blue arm bands, and he could wear --

A In some schools, on bumper stickers - and this disturbed me - the American flag was used as a symbol of support of the Vietnam war. And I had a discussion with my wife driving to and from Hastings about why those of us who have deep concerns about the Vietnam war would permit people with one point of view to appropriate a symbol that should belong to all of us; and she said, "Don't you ever put an American flag on your windshield." And I said, "I just don't want to give up the American flag to people with an opposite point of view."

Q But certainly the teacher would have a right to wear an opposite --

A The teacher has the right to wear that American flag.

Q So that we have this other gentleman expressing an opposite point of view in the room across the corridor.

A. With his American flag?

Q. No, with another emblem. Now, tell me, can't you foresee a school being polarized by teachers pairing off in opposite political views?

A. You shouldn't have asked me that question.

Q. Why not?

A. For the last 25 years, that is all I have been dealing with, polarized schools.

Q. On racial matters. And is it good?

A. I don't know. I just think it is inevitable in terms of change.

Q. Is it something to be avoided?

A. I say this, that I would fight against anyone who believes that the antidote to polarization is that one or another party should subordinate an expression of a point of view.

Q. In the educational context, would you feel that it is a good educational atmosphere if the teachers are at each other's throats politically?

A. You mean literally? No, I don't think they should be at each other's throats literally.

MR. NEUBORNE: Do you equate wearing arm bands with being at each other's throats?

THE WITNESS: No.

Q Or that as a result of wearing these arm bands, we have these underlying tensions in our school?

A Mr. Treinin, I can't deal with the problem of how do you control tensions. Again, this might not be the thing for me to say, but I just do not know that human beings make any kind of moral or ethical progress without the courage to deal with ferment and tensions.

After you leave, there is a plaque on the wall right outside this conference room, a quotation from Frederick Douglass, in which the theme of this quotation is that you cannot have progress without tension, any more than you can have crops without plowing the ground.

So I am not going to say that the goal of calm and peace should be given priority over man's endless struggle for decency and justice.

Q Do you advocate tension as a technique for better education?

A I don't advocate the injection of tension. I merely say to you, as I say in my latest book, that it is clear to me that social change, I do not believe that we would have moved - and I don't think it is rapidly at all. I think it was all too slow - toward

a rational, even ethical, and I don't think it was ethical and rational, resolution of the Vietnam war without many American citizens, and in the beginning in the minority, assuming the responsibility for expressing their point of view in spite of its being rejected by others.

Q So that you would tell us that you are against a teacher wearing a swastika, but you are for a teacher wearing the black arm band?

A In this particular instance, I say that the teacher did not incite, did not contribute toward disruption, was exercising a personal and constitutional right. I have no more to say.

Q To advertise an idea?

A To express a concern, to express a point of view.

Q So you are in favor of advertising ideas which you find beneficent and are opposed to the advertising of ideas --

A I thought you were going to say that, but I don't think that is a fair interpretation of my point of view.

MR. NEUBORNE: For most witnesses, I would have objected to that question, but I think Dr. Clark

can deal with that better than I can.

THE WITNESS: I don't think that is a fair statement although I can see how someone could state it that way. I do not believe that a teacher should inflame, incite, should exacerbate important feelings, such as the justifiable concern of the Jewish people against the barbarity of Nazi Germany.

I do not believe that a teacher should come in to a class with any symbol that would arouse in white or black students indications of racial cruelty. I do not put the wearing of a black arm band in those categories, and I certainly do not. If I did, I would have wasted a lot of time here.

Q Tell me, what would be your attitude if perhaps a misguided State Department of Education sent out a memo that says, "Wear a black arm band on Vietnam Day"?

A I would be opposed to that, just as I would be opposed to them saying, "You dare not."

Q So far as the student is concerned, the effect of that arm band is exactly the same whether the teacher wears it voluntarily or whether he wears it as a result of a direction from the Education Department?

A. No. That is the first question you have asked me that I think is beneath you.

Q. You think it isn't the same?

A. I don't think that is really germaine to this.

Q. Why not from the point of view of the student?

A. No, because I don't think that the students would have that unless you are saying to me that this teacher discussed this.

Q. We will get to that in a moment. So that you say that the effect on the student is different, depending upon whether the teacher wears it voluntarily or as a result of a command from the Education Department?

MR. NEUBORNE: I think Dr. Clark said it had no effect on the students.

A. I don't know that -- if that teacher used that symbol as a basis for further discussions, then I would better understand your question. But if this teacher just walked into his class with this and then proceeded to fulfill his reponsibility to teach those children English - and, by the way, if one of the students asked a question about this, then I think that

the teacher would have a responsibility of answering that question, or could say, "See me after class" or "See me in my office and I will discuss it."

Q Now, it would affect different people differently, would it not, this arm band, regardless of how it is worn?

A Yes.

Q And it depends on the social and economic background of the students perhaps?

A An d the intellectual --

Q Or their parents, or, God forbid, if they had a brother who was killed in the war, or if they had a friend or a neighbor who was wounded in the war, it would affect them all differently; is that correct?

A Yes.

Q Here we have the teacher coming into the classroom. What is his job? It is to educate the youngster in the course for which he is hired, is it not?

A No.

MR. NEUBORNE: I have heard Dr. Clark speak on what the job of a teacher is a number of times, and that is about as far from his view as I have ever heard.

Q. His job is to educate the youngster?

A. That is right, and to me, education --

Q. Is a broad thing?

A. Yes. When I was in the 8th grade, there was a man named Rupracht, who taught me algebra, and he did not only teach me algebra. He taught me very many important things.

Q. He was a fine man.

A. That is right.

Q. And it has carried over.

A. He taught me the importance of precision. He taught me how to not resort to alibis, and I learned algebra, but I learned a lot of other things.

Q. He was a great example to you.

A. I will not agree then that teachers whom I remember as really great teachers - and fortunately, I had many of them -

Q. You were very lucky.

A. - were people who taught me subject matter, but taught me many things beyond that.

Q. And you learned to emulate them as well.

A. I did my best to emulate them.

Q. In the classroom context, the student is the object of the efforts of the teacher. He has some

rights too?

A. The student?

Q. Yes.

A. Of course. I don't think the teacher should humiliate students.

Q. But, as a matter of fact, is it unfair to say that the students' rights are primary in the classroom?

A. I don't know. The teachers are there in order to serve the students.

I have been arguing with Mr. Shanker about this for years.

Q. So we agree that we are trying to serve the students, and it is the whole purpose of the schools and the system. So that the whole educational system is focused on that student. He is there to be taught?

A. Yes.

Q. And what is, in your mind, more important, that the teacher express an opinion or that the student have the benefit of all points of view on a subject that is controversial?

A. I think they are inextricable.

Q. The student also has human rights perhaps?

A. The student has human rights.

Q. His rights are to be considered here too?

A. Unquestionably.

Q. So that the teacher's rights are to be evaluated on a balancing basis with the rights of the student?

A. Yes, but any attempt at abridging or constricting the rights of teachers automatically constricts the rights of students.

Q. And would you say that if the students get only one point of view on a controversial subject, their rights are constricted? Forget about this arm band situation, just generally.

A. Any teacher who uses his or her power to indoctrinate a student or his students with a particular partisan political, social, racial point of view, is violating the rights of his students and violating his codes. I said that over and over again.

Q. We agree on that. So that when we have a matter of controversy, if one side is presented, the least we can ask is that the other sides are presented also. For instance, if we talk about the history of the racial situation in America, certainly no teacher who just talked the Plessey case would be

doing a fair job. You would want the Brown case talked?

A. I would want Dred Scot talked.

Q. And if we were talking about the unfortunate Israeli-Arab situation, we would not take only the writings of Abba Eban?

A. No.

Q. And if we were talking about the situation in Northern Ireland --

MR. NEUBORNE: Mr. Treinin, there is no jury here. There is no question that Dr. Clark says all points of view should be taught and that a teacher should not indoctrinate his class.

Q. It is an axiom, of course, that the average youngster, we hope, respects his teacher and tries to emulate him, so that the teacher has a profound effect on the students?

A. Sometimes, hopefully.

Q. And that is the teacher's effort, to have an effect on the student?

A. Certainly, that is what he is being paid for.

Q. So what the teacher does is bound to have an effect on the minds of the student?

A. I would hope so more than generally.

Q. So certainly, if a teacher implants an idea in the head of a youngster of --

A. Mr. Treinin, may I just say this to you, that it would be my wish that more teachers would communicate to students the importance of concern, the importance of some sense of man's responsibility for his fellow man, and my problem with the educational operation as I observe it is that there isn't enough of this, and that may disqualify me as a witness or anything else.

Q. This arm band really is an advertisement, as we said, for an idea?

MR. NEUBORNE: You keep saying that. He says it is a statement of concern. You say it is an advertisement. I ask you to stop trying to put words in Dr. Clark's mouth.

MR. TREININ: I certainly wouldn't attempt such a useless task.

Q. Isn't it similar to an advertisement in a paper or on a billboard?

A. Not necessarily.

Q. Doesn't it convey this idea?

A. I have to go back to Mr. Neuborne's statement.

I interpret the wearing of the arm band in the situation in context that this case presents as an expression of concern, and frankly I do not know and I would not presume to guess what the specific ideas of this would be. All I would hazard as a psychologist is that he was concerned.

Q. The influence of a teacher, of course, is not a measurable product?

A. No.

Q. Something we would not know for years perhaps?

A. I agree, except in terms of academic achievement.

Q. But an idea implanted, it cannot be measured, it cannot be pointed out?

A. Unfortunately, it is difficult.

Q. Now, these students were being taught English poetry. They had no opportunity to inquire or dispute the message of the arm band. Do you consider that good educational practice under those circumstances?

A. I would respond to that question by saying that if a student raised a question about that, it is my personal judgment that it would not be good educational practice for the teacher to ignore the

question, that the teacher would have the responsibility of dealing with a serious question raised by any of his students on any matter.

Now, it is up to the judgment of the teacher as to how he would deal with that question, whether he would deal with it in class or whether he would deal with it after class, or would refer the student to --

Q But you feel it should have been dealt with?

A If a student raised the question for the teacher, yes.

Q They were being taught English poetry. Would it be proper for a student to ask a question about an arm band in an English poetry class?

A I can conceive of that.

Q In other words, he would be questioning the teacher?

A He would be asking the teacher what would seem to me to be the kind of question that one human being, who is curious, might ask of another human being.

Q But here we have students who want the good will of the teacher.

A I don't see that that is relevant.

Q In other words, the teacher would be put on the spot, wouldn't he?

A Not necessarily.

Q You don't know how the teacher might react?

A I wish I had thought about wearing an arm band, and if my students had asked me about it, I would have told them.

Q In the context of a poetry class, you would expect that a teacher would at least explain his position on the wearing of the arm band when there is no discussion or exchange of ideas in your class about the arm band?

A That to me is a rather abstract question, and I will have to answer it abstractly. I could conceive of a teacher teaching poetry, and if there is a relevant passage in a poem or something about that poem which that teacher would consider -- let me answer it in terms of myself.

As a teacher, I would seek to relate something which I am teaching to something which I am feeling, and I would consider that a very legitimate role of a teacher.

Q And you would explain it to the youngster?

A I certainly would.

Q. You would?

A. Surely, and I would also entertain from my students, as I do all the time, differences of opinion.

Q. So that there would be an opportunity for the teacher to explain to his students his opinion?

A. Of course.

Q. And others may disagree?

A. Absolutely.

Q. And others may have a third or fourth opinion, and all opinions may be valid, and he has a right to his opinion?

A. And that is the joy of teaching, if you have good students that make you see this.

Q. And that is true education at its best?

A. Yes.

Q. And that is good education policy?

A. I would say without question.

Q. Do you object to anything in the New York State Syllabus on the teaching of controversial subjects that says that all opinions should be taught?

A. I did see that provision. I think that that is fine verbally, but I think extremely difficult, and it is just as well that the question is not ever raised because no one would really be able to say

that he presents; unless he is not really worthy of teaching, every teacher knows that there are so many things that are unanswered.

Q Of course. So we should do the best we can under the circumstances?

A That is right.

Q In your opinion, the presence of this arm band in the poetry class, would it possibly cause the students' minds to wander during the class, thinking what it is all about, that they might give it some attention? It is unusual.

A I could conceive of some students looking and seeing the arm band and wondering what it meant, but students' minds wander in class.

Q We shouldn't do anything to increase the wandering?

A Not necessarily. I am saying that I think that one of the freedoms that students should have is the freedom to have his mind wander.

Q Within the confines of the curriculum perhaps?

A That is one thing you can't determine. I don't remember ever being in a class where my mind didn't wander.

Q Do you feel that any teacher should make any attempt to indoctrinate in any matter whatsoever?

A No, I am against indoctrination as defined in terms of coercion, the arbitrary use of power and status to block the ability of an individual to try to think for himself; and you will notice in those reprints I gave you, that that point is made repetitiously.

Q In some of your writings, you advocate the use of students seeking prizes, of winning, of raising their sights by the use of the techniques. Doesn't that involve that the student not question the teacher?

A Oh, no, I am unalterably opposed to any form of education in which students are required not to question. In fact, to me, the best form of education is where students are encouraged to think and to question, and the only way you can do that is to have teachers who have the courage to think and to question in order to stimulate students to think and to question and to dissent, if necessary.

Q Therefore, a teacher wearing the arm band and not discussing it is not falling within that philosophy?

A. You are really trying to put me in a trap, because on the one hand, you talk about the indoctrination, which to me is verbal and concrete, etc., and on the other hand, you are now telling me that the teacher did something wrong in not discussing this symbol of his concern; and I don't think we can have it both ways.

If that teacher discussed it, it would seem to me that that teacher would have the responsibility to discuss it within the context of educationally and civil liberties sound procedure. If the teacher did not discuss it, I do not think we can impose upon him that he should have. We are saying that he should not ever have worn it. I say he had a right to wear it.

Q. And your whole testimony is based on that premise, that he had a right to wear it?

A. Absolutely, and for the reasons I stated.

Q. But it is based on that, it is built on that foundation?

A. And that in wearing it, there is no indication whatsoever, and nothing I know as a psychologist or as a person, which would say that the

very fact of wearing it would be an incitement to disruption or a situation inimical to the educational process of any class.

Q. And of course your testimony would be contrary if it were a swastika?

A. My testimony would be contrary if it were a swastika, yes.

Q. So that in essence --

A. To me a swastika is not just an expression of concern. It is an expression of identification with something which is generally agreed to be barbaric.

Q. But to a man wearing the black arm band, he was concerned with what he considered to be barbaric, too?

A. Mr. Treinin, I must tell you personally, professionally, in my writings, in my lectures, and my students will tell you, that if there is anything I indoctrinate them with, it is the responsibility of the human intellect to differentiate between the humane and the barbaric, and you will see that in this reprint I gave you, I said that the worst danger facing contemporary man is to say and act upon the belief that there can be such a thing as dispassionate

intelligence, that a functional intelligence is to help man to differentiate between a Hitler and a Ghandi.

Q But whether it is fortunate or unfortunate, a majority of the people in this country at that time felt that our presence in Vietnam was saving those people from a greater barbarism?

A And I think that was unfortunate, and I identified myself with those people who believed that was unfortunate; and if that rules me out as an objective witness, so be it.

Q Essentially, it is because you are so deeply against the conduct of the war in the manner in which it was conducted --

A I am deeply against what seems to me to be man's use of power to oppress or destroy his fellow man, and I am identified with my fellow human beings who assume whatever risks are necessary to cry out against this, and I will not hide this. I will not pretend otherwise. If my status as a professor or a regent or anything is dependent upon my obscuring this, so be it.

Q But ultimately, from many of our points of view, a great number of people, a great majority of

people, felt that we were serving the Vietnamese people?

A. I am a father, and when my children were teenagers, they used to come to me, and ask my wife and me to do this, that, and the other thing. And we said: No, we don't think so. And they used to say: But all the other parents are letting their children do this. And we said: You know, we are not the parents of all the other children; we happen, unfortunately from your point of view maybe, to be your parents.

What I was trying to get over to my children then was that we would not and could not run our household on the basis of referendum; that we were to run it on the basis of certain values which we thought were important.

Fortunately, as they grew up, they came around and said "thanks."

Q. And, on the other hand, in a democracy, we have got to consider those whose opinions we do not respect or like?

A. Absolutely, and the right to dissent.

Q. That is essential?

A. Yes.

Q And in the final analysis, what you are saying is that you are in favor of the expression of the black arm band, so you feel that that is permissible, and you are strongly --

A No, no, you have no right to say that. What I am saying is, I was responding to the question stated by Mr. Neuborne in direct, when he said, and he gave me the set of circumstances - and you did not object to them - and he asked me in my opinion, would this be disruptive, would this in ary way interfere, and I said no.

Q But you tell us that you certainly agreed with the point of view of the plaintiff?

A Absolutely, and I must say to you, I don't know this to be a fact, b[illegible] I believe that even if I did not agree, I would have to answer and would have answered his question in the same way. It happens that I agree, and I did not want to attempt to hide that.

Q And we disagree with another emblem; therefore, we are against it?

A No, no --

MR. NEUBORNE: I object most strenuously to this attempting to characterize Dr. Clark's testimony.

THE WITNESS: I say this, that any school administrator who would say that a Jewish teacher coming in with a Star of David on a chain is wrong, I would say that is absolutely untrue; that you could not, and nothing that I know of in the literature or in my observation would say that.

MR. TREININ: Thank you very much.

REDIRECT-EXAMINATION

BY MR. NEUBORNE:

Q Dr. Clark, in a prior phase of this case, the Second Circuit wrote an opinion in which they laid out ground rules to decide whether Mr. James wearing the arm band was or was not constitutionally protected, and I am going to read to you one sentence from that, and I will ask you on the basis of all Mr. Treinin's cross-examination and your professional credentials, and on the professional qualifications --

A And on my values.

Q Every man has values -- whether or not you believe that the wearing of the arm band violates this particular sentence:

"Any limitation on the exercise of constitutional rights can be justified only by a conclusion based upon reasonable inferences

flowing from concrete facts and not abstractions that the interests of discipline or sound education are materially and substantially jeopardized."

Did Mr. James' wearing of the arm band materially or substantially jeopardize the interests of sound education?

A. In my opinion, no, sir.

MR. NEUBORNE: Thank you.

(Discussion off the record.)

(Adjournment at 5:30 p.m.)

- - - -

CERTIFICATE

STATE OF NEW YORK )
) ss.
COUNTY OF NEW YORK)

I, Florence E. Parrella, a Certified Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That KENNETH B. CLARK, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF I have hereunto set my hand this 2nd day of July 1974.

Florence E. Parrella

- - - - -

WITNESS INDEX


| Name | Direct | Cross | Redirect | Recross |
|---|---|---|---|---|
| Kenneth B. Clark | 3 | 14 | | |


EXHIBIT INDEX


| Defendants | | Page |
|---|---|---|
| A (id) | Letter on the letterhead of the University of the State of New York, dated November 3, 1969. | 21 |
| B (id) | Booklet entitled "Codes of Ethics Their Interpretation and a Bill of Rights for Teachers". | 25 |

OBJECTIONS TO DEPOSITION OF KENNETH B. CLARK.

**JAMES v. BOARD OF EDUCATION, et al - Civil 71-164**

Pursuant to permission granted by the Court, I would like to make the following objections, relative to the testimony of Dr. Kenneth B. Clark, given at the examination before trial, held on June 28, 1974.

---

Page 8. I would like to object to the question on line 11, on the grounds that it omits any reference to the political significance of the armband, as admitted by plaintiff. It leaves out the distinction between the situations on the second Moratorium Day and the first Moratorium Day, and the effects of the publicity of the events of the first Moratorium Day, and the resolution passed by the Addison Teachers Association.

Page 10. I object to the answer on line 25 on the grounds that it is not responsive.

Page 13. I object to that portion of the answer commencing on line 18 on the grounds that it gives the point of view of the witness, a psychologist, and not the point of view of the student.

Page 22. I object to the answer commencing on line 22, on the grounds that it is not responsive.

OBJECTIONS TO DEPOSITION OF KENNETH B. CLARK

Page 30. I object to the questions of Mr. Neuborne, commencing on line 10 and extending to line 17, on the grounds that the questions were improper, and ask that the answers given to the questions be stricken.

I call Your Honor's attention to the responses of the witness on page 70, line 15, to the effect that his entire testimony is based on the premise that the plaintiff had a right to wear the armband; and also the response of the witness on page 72, line 9, in which he admits that he is not an objective witness, and ask that for these reasons the Court disregard his entire testimony.

At this time, I respectfully ask the Court's permission to admit in evidence defendants' exhibits 3, 4, and 8, which I inadvertently failed to offer in evidence during the trial.

Respectfully submitted,

HARRY TREININ

TRANSCRIPT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

* * * * * * * * * * * * * * * * * * * * * * * * *

CHARLES JAMES,

Plaintiff,

-v-

CIVIL ACTION
NO. 1971-164

THE BOARD OF EDUCATION OF CENTRAL DISTRICT NO. 1 OF THE TOWNS OF ADDISON, CAMERON, RATHBONE, TUSCARORA, WOODHULL, THURSTON, ERWIN, LINDLEY and CANISTEO, STEUBEN COUNTY, NEW YORK; EDWARD J. BROWN, DISTRICT PRINCIPAL CENTRAL DISTRICT NO. 1; CARL PILLARD, PRINCIPAL ADDISON HIGH SCHOOL; and ROBERT ANDREWS, PRESIDENT OF THE BOARD OF TRUSTEES OF CENTRAL DISTRICT NO. 1,

Defendants,

-and-

CHARLES JAMES,

Plaintiff,

-v-

CIVIL ACTION
NO. 1974-175

EDWARD J. BROWN, et al.,

Defendants.

* * * * * * * * * * * * * * * * * * * * * * * * *

Proceedings held before the Hon. John T. Curtin, United States District Judge, in Part II, United States Court House, Buffalo, New York, commencing on July 9, 1974.

APPEARANCES: BURT NEUBORNE, Esq., Attorney for the Plaintiff.

HARRY TREININ, Esq., and HENRY HILLE, Esq., Attorneys for Defendants.

INDEX OF WITNESSES


| PLAINTIFF: | DR. | CR. | RDR. | RCR. |
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| Charles G. James, Jr. | 27 | 82 | 197 | 199 |
| Carol Witchey | 146 | 148 | | |
| Mary Dee | 150 | 152 | | |
| **DEFENDANTS:** | | | | |
| Edward J. Brown | 202 | 231 | 282 | |
| Anthony E. Terino | 293 | 334 | | |
| Thomas D. Sheldon | 395 | 424 | | |

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decide how we will take up the motion.

MR. NEUBORNE: Fine, thank you, sir.

MR. TREININ: It happens to be a fortuitous circumstance.

THE COURT: All right. We will then defer until we hear from you further on that. Mr. Hille, you may stay if you desire. You are not required to. We now call for trial the case of James against Board of Education, Civil 1971-164.

MR. NEUBORNE: Ready for the plaintiff, your Honor.

THE COURT: Mr. Treinin, you are ready?

MR. TREININ: Yes.

THE COURT: Mr. Neuborne.

MR. NEUBORNE: Your Honor, does the Court wish an opening statement or would it simply --

THE COURT: I do not think that is necessary, Mr. Neuborne, to have an opening statement.

MR. NEUBORNE: May I have just two minutes to set up my papers?

THE COURT: Mr. Neuborne, I said it is not necessary to make an opening statement but it does seem to me in this case we have had many affidavits. We have the affidavits on the motion for summary

judgment. There are many facts here which are uncontested. They are admitted in the pleadings, some which are not, but many which are, so it seems to me that how ever you want to proceed, it is up to you.

MR. NEUBORNE: Well, I think maybe the best way to do it, if the Court agrees, is put Mr. James on and take him through a quick narrative of what I consider to be relatively uncontested facts. That will put the matter on the record and we can proceed from there.

THE COURT: I think that is the best way.

MR. NEUBORNE: At this point, the plaintiff calls as his first witness Mr. Charles James.

C H A R L E S G. J A M E S, J R. (R. D. 1, Pine City, New York), the plaintiff herein, having first duly affirmed to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION BY MR. NEUBORNE:

Q. Mr. James, can we have your name and your address for the record, please.

A. Charles G. James, Jr., R. D. 1, Pine City, New York.

Q. And are you currently employed?

A. No.

Q. May we have your educational background, the schools you have attended and the degrees you have obtained.

MR. TREININ: Mr. Neuborne, I am very sorry, but I don't hear you.

MR. NEUBORNE: I am sorry. I will move to the back of the table.

THE COURT: No. That microphone we do not have hooked up. You can stay there, Mr. Neuborne. Just keep your voice up.

BY MR. NEUBORNE:

Q. I will stay right here. May we have your educational background, schools attended and the degrees that you have attained?

A. Well, my initial college experience was in Cornell immediately after high school which was really of no great importance. I was relieved from my responsibilities there as a student.

Q. You didn't do very well academically?

A. No.

Q. Is that the school of horticulture and landscape design?

A. That's right. After my return from the military service and my decision to go in the ministry, why, I returned to

college and began my work at Mansfield State and finished my BS at Temple University in Philadelphia and --

Q. What degree did you receive from Temple?

A. A BS in education.

Q. And do you recall what year that was?

A. '60 or '61. I am not sure which. Then from there I went to Colgate Rochester Divinity School in Rochester. During that same period of time I was, of course, taking care of my church responsibilities.

Q. When you say taking care of your church responsibilities, what do you mean by that?

A. I was a Methodist minister simultaneous with my educational work.

Q. And after Colgate Rochester Divinity, - by the way, did you receive a degree from Colgate Rochester?

A. No.

Q. After Colgate Rochester Divinity School, what other schools did you attend?

A. The State University College at Oneonta and Elmira College.

Q. What did you study at the State University of Oneonta?

A. English.

Q. And what did you study at Elmira College?

A. English.

Q. And did you receive a degree at Elmira College?

A. Yes, a Masters in Education.

Q. Now, you mentioned that you are a Methodist minister and studied for the ministry at some time. I would like to just briefly take you through your religious background. After you graduated, after you left Cornell, did you enter military service, I think you testified?

A. Right.

Q. And when was that, what year was that?

A. 1950.

Q. And did you volunteer for service as a chaplain's assistant in Korea?

A. That's correct.

Q. And was that volunteer, - was your offer to volunteer accepted?

A. No.

Q. And what did you serve your military career as?

A. A teletype mechanic.

Q. Now, after you left the service and you began studying at Colgate Rochester Divinity School, where did you have ministries?

A. In what was at that time called the Genesee Conference of the Methodist Church.

Q. And what were your responsibilities in connection with that?

A. To carry on service to the parishoners to meet their

personal needs.

Q. Did you function as a pastor during that period?

A. All of those things including marrying and burying.

Q. You married people and officiated at religious ceremonies?

A. Yes.

Q. During what years did you serve as a Methodist minister?

A. From 1955 to 1963.

Q. And during that period were you a member of any of the commissions of the Methodist Church?

A. The World Peace Commission.

Q. Did there come a time, Mr. James, when your affiliation with the Methodist ministry ceased?

A. Yes, in 1963.

Q. And what was your religious affiliation at that time, in '63? Did you consider yourself a Methodist at that point?

A. I considered myself troubled.

Q. And when did you begin your affiliation with the Quakers?

A. Well, we had some contact with the Quakers when I was at Temple, Philadelphia Quakers, and New Jersey Quakers.

Q. Did you conduct joint religious activities?

A. During summers we did cooperative ecumenical services so that when I left my teaching at Banbridge and went to New York City, we immediately affiliated with the Friends in Flushing.

Q. And did you attend the Friends meetings regularly in Flushing?

A. Regularly.

Q. And what year was that?

A. 1967.

Q. And when I say regularly, you attended virtually every Sunday?

A. Right.

Q. Were you a member of the Flushing meeting?

A. Never.

Q. Can you explain for the Court the difference between being a member of the meeting and attending services?

A. Well, in most Friends meetings there are more attenders than there are members. At least in the ones I have been acquainted with. Flushing particularly founded in 1694 is a very, - kind of a weighty meeting, as they call it, which is a term used by Quakers meaning the kind of prestigious, respected meeting, and it wasn't the kind of place I would even thought about asking for membership until I had been there many years. In fact, I just met a lady recently who attended twenty years and still, much to my surprise, had not ever applied for membership.

Q. And when did you attend the Flushing meetings, during what years? I think you said you started in '67. When did you stop?

A. In '69 when we came upstate.
Q. And when you came upstate did you attend the Elmira meetings?
A. After we found it, yes.
Q. How long did it take you to find it?
A. I don't know. We had kind of a struggle for a couple of months finding where they were located. They weren't even listed in the telephone book.
Q. When you finally found them did you continue to attend the Friends meeting on a regular basis?
A. We became quite enmeshed, yes.
Q. And have you subsequently become a member of the Elmira meeting?
A. Yes.
Q. You became a member after the incident that is at issue today?
A. Right.
Q. But prior to your dismissal in 1969, had you been attending the Elmira meeting regularly?
A. Yes.
Q. And you are currently still a member of that meeting?
A. Yes.
Q. Very briefly now if we can get your employment background, Mr. James, during your attendance at Colgate Rochester Divinity School I take it that you were employed as a

Methodist minister?

A. That's correct.

Q. And you received a salary?

A. Right.

Q. What years did you serve as a Methodist minister?

A. Started in June of 1955 and ended the last day of August of 1963.

Q. And where was your next employment?

A. Banbridge Guilford Central School.

Q. And what did you do at Banbridge Guilford Central School?

A. Taught English.

Q. And what year, do you remember? How old were your students?

A. My first year I taught ninth grade only. My second year ninth and tenth and then thereafter the higher grades.

Q. And how long did you remain at Banbridge?

A. Four years.

Q. And why did you leave Banbridge?

A. Well, my wife and I wanted to see the city.

Q. Did you leave of your own accord?

A. Yes.

Q. Were you on good relations with the school board? Could you have stayed if you wished?

A. Surely.

Q. And where was your next job?

A. Artruro Tosconini Junior High in the Bronx.

Q. Is that a junior high school in South Bronx?

A. Yes, Teller Avenue.

Q. What is the predominant composition of the student body at Tosconini?

A. Forty-five per cent black and fifty per cent Puerto Rican and five per cent miscellaneous, I guess.

Q. And how long did you teach at Tosconini?

A. Two years.

Q. What did you teach there?

A. English.

Q. And was there any special aspect to your teaching?

A. Well, some of my classes were non-English speaking students.

Q. Did you have satisfactory evaluations while in the New York City public schools?

A. Yes.

Q. And when did you leave the New York City public school system?

A. At the end of the 1968-'69 year.

Q. And why did you leave?

A. Well, we had been very much embroiled in the teacher strike that took place in the city and I had been a non-striking teacher and we had effected a continuous teaching system during the strike in my school and kept the school open and maintained education and it was well known among

the strong members of the union that I had functioned in this way and a lot of pressure was brought to bear on my children in the system.

Q. And were you fired?

A. No.

Q. Could you have stayed if you wished?

A. Yes.

Q. And in 1969 you were hired to teach English at Addison, is that correct?

A. Correct.

Q. And do you recall what month you were hired in?

A. What month I was hired?

Q. Yes.

A. I came upstate in May, I think.

Q. Did you sign a salary agreement with Addison?

A. Yes.

Q. I show you a document dated June 2, 1969 and ask you if this is the salary agreement you signed?

A. That is it.

THE COURT: Mr. Neuborne, when any document which is going to be referred to, please have them marked.

MR. NEUBORNE: For identification?

THE COURT: Yes. Will you do that, please?

MR. NEUBORNE: Yes. Will you mark this for

identification, please.

THE COURT: Plaintiff's Exhibit Number 1. Do you have some other documents which are going to be used during the course of examination?

MR. NEUBORNE: Yes, there is. Shall I have them marked now?

THE COURT: Why not have Mr. Walsh mark them all now. Mr. Treinin is probably familiar with all of them but so that we can continue as expeditiously as possible --

MR. NEUBORNE: Yes, sir. It will take a time to do that.

THE COURT: Do that and I will step off for a minute and when you are finished, Mr. Walsh, let me know.

(Recess taken at 10:48 a.m.)

* * * * * * * * *

PROCEEDINGS: After recess, 11:05 a.m.

APPEARANCES: As before noted.

(Plaintiffs Exhibits Numbered 1, 2, 3, 4, respectively, marked for identification.)

C H A R L E S G. J A M E S, J R., the plaintiff herein, having previously duly affirmed, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. NEUBORNE: (Resumed)

THE COURT: All right, Mr. Neuborne.

MR. NEUBORNE: Can we have where we were at?

THE COURT: I think we just had --

MR. NEUBORNE: I am just going to show this to Mr. Treinin.

THE COURT: Yes.

MR. NEUBORNE: Plaintiff's Exhibit 1, the plaintiff offers the salary agreement between Mr. James and the Addison Central School as Plaintiff's Exhibit 1.

THE COURT: Be sure to keep your voice up, Mr. Neuborne. Any objection?

MR. TREININ: None whatsoever.

THE COURT: It may be admitted in evidence.

(Plaintiff's Exhibit Number 1 received in evidence.)

BY MR. NEUBORNE:

Q. Mr. James, what grade were you hired to teach at Addison?

A. Eleventh grade.

Q. And how old were your students?

A. About sixteen and seventeen.

Q. And how many classes were you hired to teach? What was your school day to be like?

A. Five teaching classes, class load of five classes.

Q. And was that the normal class load for a teacher at Addison?

A. Yes.

Q. And you began to teach at Addison in September of 1969, is that correct?

A. That's right.

Q. Now, prior to November 14, 1969 had you received any criticism concerning your teaching ability from any person?

A. No.

Q. Had you received any complaint from any student, faculty member or member of the administration?

A. No.

Q. Concerning your teaching?
A. No.
Q. And on November 14, 1969, Mr. James, you wore a black armband to school, did you not?
A. That is correct.
Q. Could you describe for the Court how you were dressed that day?
A. Dressed like I normally dress.
Q. Well, how was that?
A. Slacks, sport coat, shirt and tie.
Q. And where was the armband?
A. It was on my coat.
Q. When you say "coat" you mean your sport coat?
A. I don't know. I am confused about that. I almost think I had an armband on my topcoat that day too, but I am not sure.
THE COURT: After you took the topcoat off and you were in the classroom --
THE WITNESS: It was on my sport coat.
THE COURT: Was it on your left or right arm?
THE WITNESS: Left arm.
BY MR. NEUBORNE:
Q. And was there any writing or any other adornment on the armband?
A. No.

Q. I take it it was just pinned to your sleeve?

A. Right.

THE COURT: Can you recall now how wide it was? You are indicating about two and a half, two inches, all right.

BY MR. NEUBORNE:

Q. Mr. James, how did you come to be in possession of this armband?

A. Well, our Quaker meeting, Friends Meeting, had been trying to organize themselves into some sort of an effective body regarding; statements on the war and so we had had a kind of almost like a work kind of brainstorming session or something, I guess, in which we got together and talked about things that we wanted to do, but also had some actual projects and one of those projects was to make these armbands that could be distributed among members of the meeting.

Q. Were the armbands made at the Quaker meeting house?

A. That's right.

Q. And who made them?

A. I really don't remember.

Q. Did you participate in making them?

A. I don't think that I tore the cloth up, no.

Q. Was it, - did the members participate in any prayer or meditation while the armbands were being made?

A. Not at the time of the armbands. We always gather in silence at the beginning of most every activity and that silence is a combination of waiting and listening and praying.

Q. And were the armbands handed out to members of the meeting?

A. The fact the armbands had been discussed and the use of it had been discussed, and there were informal remarks like "Who wants one", and they were put on a particular table where people who wanted them could pick them up.

Q. Did any student complain to you about the armband on November 14th?

A. No.

Q. Did any faculty member complain to you about the armband?

A. No.

Q. Did you observe any breach of discipline or other break in the normal school routine that day?

A. No.

Q. Did you discuss the armband with your students in class at all?

A. No.

Q. Did you deviate from your normal teaching routine in any way on November 14, 1969?

A. No.

Q. What classes, if any, did you teach while wearing the armband on November 14, 1969? Maybe I will do it this

way, what time did you arrive at school that day?

A. 8:00 o'clock.

Q. And at 8:00 o'clock what is your responsbility?

A. No official responsibility that early. I just go to my room.

Q. And is that your homeroom?

A. Right.

Q. And what time does your homeroom begin?

A. About 8:30.

Q. And did homeroom begin at the usual time on November 14th?

A. Right.

Q. And did you conduct whatever responsbilities and obligations you had as a homeroom teacher on November 14th?

A. Yes.

Q. You were wearing the armband while you were doing that?

A. That's right.

Q. How long did the homeroom last?

A. About fifteen minutes.

Q. Were there any incidents in the homeroom, any disciplinary problems, anything that would deviate from a normal homeroom day?

A. No.

Q. And where did you go at the close of your homeroom?

A. I stayed in my room. My students came to me.

Q. What was your responsibility in the period immediately

succeeding homeroom?

A. My first period is free that year, so I remained in my room and, you know, worked on lesson plans and so forth.

Q. How long did your free period last?

A. About forty-two minutes, forty-three minutes, something like that.

Q. And during your free period which I take it lasted what, from about 8:45 to 9:30, would that be a fair estimate?

A. Yes, that's about right.

Q. During that time, did you speak with any student?

A. No.

Q. Did you see any student, did any student come in to see you?

A. No.

Q. What was your second period of that day?

A. It was an English class.

Q. And was it English for juniors in high school, is that correct?

A. Right, eleventh grade, non-Regents. They have a division between those considered Regents students and those who are considered what they call local students.

Q. And your second period, what was your teaching plan for that day?

A. Poetry.

Q. Poetry, and did you commence teaching your class?

A. Yes.
Q. Did you observe any behavior or other incidents in the classroom that would be different from a normal day?
A. No.
Q. Were you successful, in your opinion, carrying out your teaching plans for the day?
A. As far as I got.
Q. Were the students participating in the class?
A. Yes.
Q. And I take it there came a time during that second period when your teaching was interrupted?
A. That's right.
Q. Could you describe the interruption for us?
A. The telephone rang and I answered it and the building principal, Mr. Pillard --
Q. What did Mr. Pillard say to you?
A. Requested that I come to his office.
Q. Now, Mr. James, why did you wear the armband that day?
A. Well, I have been trying for a long time to somehow be able to make a statement to imply that the war was kind of a madness and man had no right to do this to himself and the meeting helped gel a method for me, provided me an opportunity to make a straighforward simple statement through the armband.
Q. Did the, - did you intend by wearing that armband to

persuade any person to think as you did?

MR. TREININ: I object to what he intended, your Honor.

THE COURT: I will overrule the objection, Mr. Treinin, and I will consider your motion to strike when you make the motion. Go ahead.

MR. NEUBORNE: Mr. Reporter, would you read that question back?

(Pending question read as follows: "Q. Did the, - did you intend by wearing that armband to persuade any person to tnink as you did?")

THE WITNESS: No.

BY MR. NEUBORNE:

Q. Was it your intention to intimidate your students by wearing that armband?

A. Absolutely not.

Q. Did you want to proselytize them or harangue them to your view?

A. No, sir.

MR. TREININ: Of course, my objection is continuing.

THE COURT: Of course, these are leading questions. I think it would be more helpful if the facts were brought out through the testimony

of the witness.

BY MR. NEUBORNE:

Q. Yes, sir. I will refrain from leading. What did you anticipate the impact of your armband would be on your students?

A. I didn't anticipate to have any impact whatsoever. I am sure I harbored the hope that some student might see the armband and think that there were those who thought that killing was wrong and I anticipated I might get some frowns from some of my fellow teachers.

Q. Did your wearing of the armband on November 14th have any effect on your students which you were able to perceive?

A. No.

Q. Let's go back to the telephone call that interrupted your second period class, the call from Mr. Pillard. What did Mr. Pillard ask you to do when he spoke to you on the phone? I take it there is a phone directly in your classroom?

A. Right on the wall by the door. He asked me to come to his office.

Q. And what did you do then?

A. I went to his office. I told the class that I was called to the office and I said in so many words to maintain their self control.

Q. Was that the first time that day that Mr. Pillard had spoken to you?

A. No. He had come in my room about, I would say about ten or fifteen minutes after 8:00 that morning and came to the corner of my desk and I think he sat down and he said to me there would be students, - he believed there would be students wearing black armbands that day, a few of them, and if any wore black armbands, to ignore it, not to mention it and just to pretend I didn't see them and in the course of the conversation he focused on my armband but he didn't make mention about it.

Q Now, and did you go to Mr. Pillard's office when he requested you to do so?
A Yes.
Q Could you tell us, did you have a conversation with Mr. Pillard in his office?
A Right.
Q What did he say to you when you came in?
A The first thing he said upon my walking in the room is "Why are you wearing that armband", and I, you know, it is a difficult question to answer in one sentence.
Q What did you say?
A But there was an implication to answer it in one sentence.
Q And what did you say?
A I said "Because I am against killing".
Q And then what did he say to you?
A Well, in essence, he said to me that the armband he considered political and that he considered it an act against the president of the United States and that he would have to ask me to take it off.
Q And what did you say to him?
A Well, firstly, I asked him to give me some time to think it over and he said "No, if I knew what I wanted to do, I knew right then", and so I thought about several things for a couple of moments and told him that I would

leave it on.

Q. Did he express any fear to you of physical disruption in the school if you left it on?

A. No. The only anxiety, the only fear he expressed was he said that he probably would get calls from all of the parents by noon if I left it on, he he allowed me to leave it on and teach.

Q. And what did he say to you when you told him you were going to leave the armband on?

A. He told me I would have to go to Mr. Brown's office.

Q. And what did you do then? By the way, about how long did the conversation take in Mr. Pillard's office?

A. Oh, I suppose about five or ten minutes, and so when he told me to go to Mr. Brown's office, I said "Well, I want to go by and check the class", so I went back upstairs and checked my classroom.

Q. And what was the state of your class when you checked your classroom?

A. The students were quite quiet, pleasingly so. A few of them turned sideways in their seats talking to each other and I just told them to remain as they were, so to speak, and I went on to Mr. Brown's office.

Q. During the period that you were in Mr. Pillard's office, as far as you know, no teacher was supervising your students during that period of time?

A. That's right.

Q. Where is Mr. Pillard's office? Mr. Pillard's office is located right in the high school, isn't it?

A. Right.

Q. And so is Mr. Brown's?

A. Right.

Q. And I take it you left your classroom and proceeded to Mr. Brown's office?

A. That's right.

Q. Was anyone else in the office with you when you got there?

A. No.

Q. And when you went into Mr. Brown's office, did you have a conversation with him?

A. Yes.

Q. And can you tell us what is the first thing Mr. Brown said to you?

A. He asked me the same question that Mr. Pillard asked me, why I was wearing the armband and I gave him the same answer, because I was against killing.

Q. And what did he say to you then?

A. Well, essentially the same thing, that it was political and was an act against the President of the United States.

Q. He specifically mentioned the President of the United States?

A. Yes. I remember saying - -

Q Did you reply?

A Well, I remember kind of disbelief and I said, you know, "We know that this began long before Mr. Nixon was President", and this kind of thing never occurred to me that anybody would consider it an act against the President.

Q Did Mr. Brown ever ask you to inform the class that your wearing the armband was strictly personal, a personal point of viewand that they were free to disagree with it if they wanted?

A No.

Q Would you have done so if he asked you?

A Gladly.

Q Now, why didn't you say that to the class yourself?

A Well, I didn't see any, - I didn't feel there was any way I could fit that into what was the teaching procedure for the morning.

Q When you, - I take it you refused to remove the armband at the close of your conversation with Mr. Brown.

A That's correct.

Q How long did that conversation last?

A Well, I would estimate it probably lasted at least twenty, thirty minutes.

Q When you refused to remove the armband, what did Mr. Brown tell you to do?

A. I was told to go back, - well, like I had never been fired before, what do I do, leave at noon or the end of the day and he told me to go back to my room and that I should leave then.

Q. He told you to leave immediately?

A. Right.

THE COURT: Excuse me, Mr. James. I didn't follow that. After the conversation with Mr. Brown, you said "I cannot remove the armband", and what direction did he give to you then?

THE WITNESS: He told me to go back to my room and get my things and leave the building.

THE COURT: I see.

BY MR. NEUBORNE:

Q. And did he say anything about getting rid of you permanently?

A. As I recall, the statement was something, - there was a statement to the effect that he was going to suspend me and that he would get rid of me if he could.

Q. And did you return to your room?

A. Yes.

Q. And were there students in your room when you returned to your room?

A. Yes. There were students there and Mr. Pillard came in the room and told me to take the students to the cafeteria.

Q. And did you do so?

A. And I did.

Q. Were the students' behavior in any way abnormal at that point?

A. No.

Q. After you took the students to the cafeteria, what did you do then?

A. Packed up my books and got my car and headed towards home.

Q. And where is the first place you went?

A. Well, I went through, - I had to go through Corning to get to my home and for some reason or other, my head was exceptionally clear and I said, "Well, if I haven't got a job, I think I better stop and apply for one", so I stopped at the Board of Education Office in Corning and filled out a job application form and the next stop I made was a telephone booth.

Q. And what did you do in the telephone booth?

A. Called New York City, the American Civil Liberties Union.

Q. And after that, where did you go?

A. Then I started back down the highway and as I did, I

realized that a very dear friend who had gone to college and seminary with me had a church that was just adjacent to that highway in the Village of Big Flats and so I pulled off there to ask him for support, emotional support.

Q. What was his name?

A. Donald Rowe.

Q. And what was his employment at that time?

A. Methodist Minister in Big Flats.

Q. And did you have conversation with him?

A. How long did that conversation last?

A. I suppose about half an hour.

Q. And where did you go after that?

A. To the Quaker Meeting House.

Q. What was going on at the Quaker Meeting House?

A. We were having an around-the-clock vigil to which people could come and go, come into the meeting house for meditation and prayer or next door to the Quaker Meeting House for discussion and conversation and fellowship.

Q. Now, during the succeeding weekend, - this is November 14th, - did you receive any notification from the School Board concerning your having worn the armband on November 14th?

A. My wife did. I wasn't there.

MR. TREININ: If it is one of the letters you

showed me, go ahead, sure.

THE COURT: Why don't you continue, Mr. Neuborne. If there is anything Mr. Treinin wants to look at, he will let you know. I know you are both very familiar with these documents.

BY MR. NEUBORNE:

Q Is this the letter you received, a copy of the letter which you received?

A That's right.

MR. NEUBORNE: At this point, the plaintiff offers this letter as Plaintiff's 2.

THE COURT: May be marked in evidence.

MR. TREININ: What is the date on that?

MR. NEUBORNE: November 14th.

(Plaintiff's Exhibit Number 2 received in evidence.)

BY MR. NEUBORNE:

Q And you returned to school on November 17th, is that correct.

A Monday, yes.

Q Monday morning?

A Yes.

Q. When you returned to school on November 17th, did you carry out normal routine teaching duties?

A. That's right.

Q. Did your wearing of the armband on November 14th, in any way affect, in your own perception, of course, your ability to carry out your teaching duties on the 17th?

A. No.

Q. And did you teach then without incident until December 12th?

A. That's correct.

Q. Now, the letter that you received on the 15th stated that the Board deems your action to be a political act; as such, it is prohibited in the school. Did you deem your wearing the armband to be a political act, Mr. James?

A. No, absolutely not.

Q. And on December 12th, you once again wore the armband to school, did you not?

A. That's right.

Q. Was it the same armband, by the way?

A. Yes.

Q. Now, both November 14th and December 12th just weren't random days, were they, Mr. James? They were days of national concern over the Vietnam war?

A. That's true.

Q And the reason you wore the armband on those days was because it was a moratorium day, was it not?

A That's true.

Q Did other members of the Quaker meeting wear the armband on December 12th as well?

A That's right.

Q In the period of November 17th through December 12th, did you receive any complaint from any student or teacher concerning your having worn the armband?

A No.

Q Now, on December 12th, what time did you get to school?

A About 8:00 o'clock.

Q And what time, - did any member of the administration discuss your wearing the armband with you on December 12th?

A Well, I hadn't been in my room only a matter of moments when Mr. Pillard, the building principal arrived and told me to go to Mr. Brown's office.

Q At this time had any students come into the room?

A No.

Q Were any students in the school?

A No.

Q And did you go to Mr. Brown's office?

A Yes.

Q And did you have a conversation with Mr. Brown in his office?

A. Yes, I did.

Q. Would you give us the substance of that conversation?

A. Well, Mr. Brown informed me that he was surprised. He thought I was a wiser man than to wear the armband a second time. He was surprised at my poor judgment and we had, - I am sure, some discussion regarding educational principles which occurred both times and it was obvious that he and I were equally convinced of what we believed and so I said, you know, "Let's get this over with".

Q. And what did he say to you?

A. Told me I was suspended, as I recall.

Q. And did he direct you to leave the building?

A. Yes.

Q. And did you leave the building?

A. I did.

Q. On December 12th, did you address any student at all while you were wearing the armband?

A. No.

Q. Would I be wrong in summarizing the total amount of time that you appeared in the classroom wearing the armband was homeroom on November 14th and about twenty minutes of your second period class on November 14th?

A. That's correct.

Q. And were your reasons for wearing the armband to school

on December 12th the same reasons you testified you wore it on November 14th?

A. Yes.

Q. Did any student complain or make any other comment regarding the armband on December 12th?

A. I didn't see any students.

Q. Now, to your knowledge, Mr. James, was your wearing the armband on the 12th of December and the 14th of November the sole basis for your suspension?

A. Yes.

Q. And to your knowledge, did your armband cause any disruption in the ordinary routine at Addison High?

A. No.

Q. To your knowledge, were there any facts which might have justified someone fearing that your armband would cause some kind of disruption?

A. No.

MR. TREININ: I object to the continual leading.

THE COURT: These are leading questions.

BY MR. NEUBORNE:

Q. I am sorry. I will get at it, if your Honor will. You taught at Addison from September until your suspension in December, is that correct?

A. That's right.

Q. During that period, could you tell us the state of the disciplinary situation in the school? Was it a

well-behaved school, was it a turbulent school?

A. It was a very quiet school, especially after the Bronx.

THE COURT: Especially after what?

THE WITNESS: The Bronx.

BY MR. NEUBORNE:

Q. The school he had taught at before, your Honor. Were there any sit-ins at the school?

A. No.

Q. Were there any demonstrations?

A. No.

THE COURT: Mr. James, could you just briefly sketch the normal day? Were most days about the same?

THE WITNESS: Right.

THE COURT: As far as schedule of classes?

THE WITNESS: Standard five days a week teaching schedule everyday.

THE COURT: Would you tell us what classes you had?

THE WITNESS: They were all English classes, some regents and some what they call locals, non-regents. I probably had one study hall. I can't remember for sure about that, but I,

no doubt, had one study hall and one preparation or free period.

THE COURT: These were all 11th grade?

THE WITNESS: Yes.

THE COURT: You talked about, - when you say English, did you have any of these broken down into sub-classes, poetry or other, were they different or the classes all about the same?

THE WITNESS: Well, the locals classes are quite different in most of the schools.

THE COURT: I mean as far as your experience, what was it?

THE WITNESS: Do you mean when I taught the same, or the type of students?

THE COURT: You see, you say English, but of course, later on, you said you had a poetry class.

THE WITNESS: That was just I had a poetry lesson. That wasn't a poetry class.

THE COURT: What I am trying to get at is what was your routine during the day; did the classes have titles?

THE WITNESS: No.

THE COURT: Just English 11, is that it?

THE WITNESS: Right.

BY MR. NEUBORNE:

Q. Were you the only 11th grade English teacher?

A. Yes, I think I was.

Q. I think what Judge Curtin was getting at, did you teach the same lesson plan to each group of students as they came in?

A. No, different lesson plans for the regents students.

Q. But apart from that distinction, did you teach the same lesson plan to each group of students as they came in?

A. Yes.

MR. NEUBORNE: Was that what your Honor was asking?

THE COURT: Yes.

BY MR. NEUBORNE:

Q. And did there come a time when you were finally dismissed as an English teacher at Addison?

A. December 12th.

Q. That was a suspension. Was there a - -

A. There was an official firing. That took place in January as a result of a Board meeting.

Q. But you were paid up until January, that January Board meeting?

A. That's correct.

Q And after the January Board meeting, you weren't paid, is that correct?

A That's right. There was final paycheck.

MR. NEUBORNE: Your Honor, that is the segment of my questioning on the narrative of what occurred. If the Court please, I would go into damages now, or would the Court rather have cross on this?

THE COURT: I think you might as well continue on.

BY MR. NEUBORNE:

Q From your dismissal in January - -

THE COURT: As far as the record is concerned, is there any notice in the intervening period between December and January, any letters sent to Mr. James, or after January?

MR. NEUBORNE: I am sorry, sir. I didn't have this marked. It is a formal letter.

(Plaintiff's Exhibit Number 5 marked for identification.)

MR. TREININ: What is the date on that?

BY MR. NEUBORNE:

Q January 13th. There is some pen and ink notations on

the letter which I know nothing about and, of course, I am not offering those. Is this the letter that you received from the Addison School Board notifying you that you had been dismissed finally?

MR. TREININ: I can't hear you. I'm sorry, Mr. Neuborne.

MR. NEUBORNE: I am sorry, Mr. Treinin. I should speak up.

THE WITNESS: That is the letter I received, yes.

MR. NEUBORNE: I offer it. It is marked as Plaintiff's 5, your Honor.

THE COURT: Mark it in evidence. May I see it, please?

MR. NEUBORNE: Yes, sir.

THE COURT: Why not continue.

(Plaintiff's Exhibit Number 5 received in evidence.)

BY MR. NEUBORNE:

Q Now, prior to your receiving this letter, Mr. James, had you received a copy of these minutes, December 17th?

A Yes, I did.

Q Now, did the Board, - the Board invited you to appear

before it, did it not?

A. I had asked them if I could, yes.

Q. And was this the response that you received?

A. That's right.

Q. And inviting your attention to the portion of the minutes which read "Attorney Treinin reminded that any meeting would not be a hearing, but it would be for listening to comments Mr. James might wish to make". Did you understand that your appearance before the Board would not constitute a hearing?

A. That's correct.

Q. Did you believe that you would have to write - -

THE COURT: Mr. Neuborne, is that marked?

MR. NEUBORNE: I am about to offer it. It is marked as Plaintiff's 3 and I will offer it now.

THE COURT: It may be marked in evidence.

(Plaintiff's Exhibit Number 3 received in evidence.)

BY MR. NEUBORNE:

Q. And you declined to appear before the Board unless they granted you a formal hearing, is that right?

A. That's right.

Q And after you declined to appear before the Board, they sent you the letter which is Plaintiff's Exhibit 5, is that correct?

A Your chronology I am not sure. This letter, yes.

Q Now, from your dismissal on January 13, 1969, until your reinstatement in August of 1972, were you able to secure full time employment as a teacher?

A No.

Q Were you able to secure full time employment in any other field of work?

A No.

Q Did you attempt to find employment during this period?

A I did.

Q I ask you to look at the documents which are identified as Plaintiff's Exhibit 4 for a moment. Take some time and go through them. Do you recognize that correspondence?

A Sure do.

Q Could you describe it for us, if you could.

A All my job application letters.

Q And did you send out these letters in an attempt to find employment after you were dismissed?

A Yes, I did.

MR. NEUBORNE: Mr. Treinin, I will offer these solely, of course, for the purpose of showing attempt to find employment,

not for the truth of any characterizations or statements contained in the letters or any answers.

MR. TRUMAN: With that limitation, I have no objection.

THE COURT: Mark them in evidence with that understanding.

(Plaintiff's Exhibit Number 4 received in evidence.)

BY MR. NEUBORNE:

Q Would you briefly describe to the Court, without duplicating the material which is in Plaintiff's 4, some of the places that you sought work after you were dismissed?

A You say not mentioning - -

Q No, not necessarily going through every one of those, just mentioning a few.

A Oh, I see. Well, of course, I made the first application at Corning. Then I applied to other schools in the area, my own Elmira City School System and I began to write letters to places more distant. I also applied to the Department of Social Services, because my first summer in New York while I was waiting to teach, I had worked for the Welfare Department there. Because of my

counsel work in the ministry, I applied to the psychiatric center as a counselor and wrote to a number of junior colleges and colleges.

Q. And were you successful in getting full-time employment?

A. No.

Q. Were you able to find part-time or temporary employment during this time?

A. I succeeded in getting, - my first part-time job as I recall was - -

Q. Just answer "yes" or "no".

A. Yes.

MR. NEUBORNE: Your Honor, if it please the Court, this testimony that will come in now is somewhat complex because it is going to deal with the amounts earned at various jobs and Mr. James has prepared a memorandum to refresh his recollection of those amounts.

THE COURT: I think it would make sense that that would be the best way to offer it and then Mr. Treinin, if he desires, could cross examine on it.

MR. NEUBORNE: There is a memorandum prepared and submitted to the Court in connection with the motions.

THE COURT: That is connected with your - -

MR. NEUBORNE: Summary judgment application, your Honor.

THE COURT: Why don't you just continue. I know I saw it before. There is an affidavit of Mr. James here. No.

MR. NEUBORNE: I think it was, your Honor. I submitted a chronology to the Court and a list of earnings.

THE COURT: Why don't you - -

MR. NEUBORNE: I suppose we might as well go through it orally at any rate, sir.

THE COURT: Is this it, Mr. Neuborne? Here is the earnings. Mr. Neuborne, I have it on this sheet here.

MR. NEUBORNE: That is it, sir, the second page of that.

THE COURT: Let us mark that as an exhibit and then you can show it to - -

MR. NEUBORNE: Mr. Treinin has a copy, of course.

THE COURT: Leave that altogether. Mark that as an exhibit, please.

(Plaintiff's Exhibit Number 6 marked for identification.)

MR. NEUBORNE: I would offer Plaintiff's Exhibit 6 in evidence, with the understanding that Mr. James will verify each of those items under cross examination if Mr. Treinin wishes.

THE COURT: Why don't you just show that to Mr. James. Mr. James, this is a chronology, as I understand it, of your part-time employment after January of 1970 with the earnings which you were able to make during the periods of employment. Is this accurately prepared?

MR. NEUBORNE: Take some time. Look it over.

THE WITNESS: Yes.

THE COURT: Did you do it yourself or did you have some assistance in preparing it?

THE WITNESS: As I recall, my wife. I am not very good with figures.

MR. NEUBORNE: For the Court's information, the raw figures were supplied to me and I had that material typed up based on raw figures supplied by Mr. James.

THE COURT: We will mark it in evidence, subject to cross examination.

MR. TREININ: I am sorry, did Mr. James say that the wife prepared the figures, Mr. Neuborne?

MR. NEUBORNE: His wife mailed the figures to me.

MR. TREININ: Oh, mailed them.

(Plaintiff's Exhibit Number 6 received in evidence.)

BY MR. NEUBORNE:

Q Mr. James, your employment in '70, '71 and '72 consists of work done during regular school hours and work that was performed other than during regular school hours, isn't that correct?

A Right.

Q I wonder if you would simply, - your Honor, would it be appropriate if Mr. James placed a mark - -

THE COURT: Yes, certainly.

MR. NEUBORNE: I wonder if you would go down these various jobs and list the jobs that you performed during regular school hours with a check mark and

not check the jobs that you performed other than during regular school hours. Is that more confusing than I meant it to be?

THE COURT: No. That is all right.

THE WITNESS: Therefore, the check mark indicates at that time simultaneous with teaching in school?

MR. NEUBORNE: Yes.

THE COURT: That's right, yes.

MR. TREININ: Mr. Neuborne, may I inquire, when we talk about the hours, are we also considering the dates as to when Addison Schools term commenced and finished?

THE COURT: In other words, not during the summer. You didn't teach there, - there was no summer school class.

MR. NEUBORNE: That's right. I meant evening or summer school or the early morning hours there were some that were done in the early morning hours.

THE COURT: All right.

THE WITNESS: There is one complex one here, the part-time laborer for Werner-Salle.

THE COURT: May I suggest, Mr. James, those where there would be a partial conflict with school hours, why don't you put a different mark, maybe a circle.

THE WITNESS: Okay.

BY MR. NEUBORNE:

Q And if you can, make an allocation between the amount of work done during school hours and the amount of work done other than school hours, a percentage allocation.

A. I am putting down three-fourths during school hours.

THE COURT: Mr. James, will that take you some time to do?

THE WITNESS: No. It is half done already.

THE COURT: I think, Mr. Neuborne, we will take a break now and we will be back in a few minutes.

(Recess taken at 11:55 a.m.)

* * * * * * * * * * * *

PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 1:35 P.M.

C H A R L E S J A M E S, called as a witness in his own behalf, and having been previously duly sworn, resumed and testified further as follows:

THE COURT: Mr. Neuborne.

MR. NEUBORNE: Before we continue, I think your Honor read this to us.

THE COURT: Leave it there, please.

MR. NEUBORNE: I note in connection with Plaintiff's Exhibit 6, which is the schedule of earnings that we prepared, that the ink that Mr. James placed on Page 1 of that document inadvertently soaked through onto Page 2, creating markings on Page 2. The record should indicate that there should be no ink markings whatsoever on Page 2.

THE COURT: All right.

MR. NEUBORNE: Your Honor, plaintiff has completed questions concerning back pay. The only line of questions that remain to be posed to Mr. James

involve compensatory damages from emotional and mental distress, flowing from a violation of his First Amendment rights. It is that line of questions that I would like to put to him now.

THE COURT: All right.

DIRECT EXAMINATION BY MR. NEUBORNE (Continued):

Q Mr. James, can you tell the Court the impact on your mental and emotional sensibilities of your being fired for having worn the armband?

A Well, at first there was not much of an impact. I assumed that in a matter of a few days I would be back at my work, and I was pursuaded that what seemed to me to be a self-evident right of mine had been exercised and, therefore, it would all blow over. When it really began to sink home that certain realities were existent, employment and my ability to get employment, I guess the first sense that I had probably was frustration, and yet a kind of optimism, well, this will work itself out quite readily, too. As time went on, I could see road blocks in every direction, then a definite sense of emasculation. It is one thing to adopt a life style that may be other than average, but it is quite another

thing to be forced into a life style.

Q When you say "a life style", what do you mean?

A Well, as a result of being unemployed, why we worked very diligently, trying to increase the amount of garden space and simplifying the amount of money that we spent, in other words, living more simply, which, of course, should be a Quaker aim anyway, but really had not been taken that seriously by us until we were forced into this position. But it became a necessity, and it lost any of the patina of romance it might have had before that, and it entailed a lot of things that you don't dream of when you are thinking of simplifying life style.

Q Could you give us a few examples?

A At first the children, like myself, thought we have stood up for what we believe, considering themselves part of it in a sense, but then the point came where the question of putting your name on a sheet of paper in school, it separated them from the majority of their classmates - -

MR. TREININ: Your Honor, may I object to any testimony of any effect, other than on the plaintiff and the allegations of the complaint.

MR. NEUBORNE: Of course, if it affects his children - -

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THE COURT: I would think, Mr. Treinin, that if there is an impact on the plaintiff's children, it would be an impact also upon him. I would appreciate it - - I know this is difficult, you can't always reduce these kind of things down to a cold and a fever sort of illness - - if you can, give us some - - maybe you are just beginning to - - some factual examples.

THE WITNESS: All right. That was what I was starting to do. My children had to be separated from the majority of their classmates, and had to put their names on a roll, a list of those people to receive school lunches - -

BY MR. NEUBORNE:

Q. Free school lunches?

A. Free school lunches, right. One of - - my youngest daughter, at the age of seven or eight, was in the cafeteria line at school, and was going to get ice cream with her lunch, and I had given her extra change so she could have ice cream that day, above her allotment, and the woman at the cash register was having trouble making change, and the principal came over and said what was

the problem, and she said she was getting ice cream, and she said, "You shouldn't be getting ice cream, you are on welfare."

Q. Were you forced to go on public assistance for a period of time?

A. Right. This, obviously, had many ramifications and shock waves, as far as the communication of the family about what this meant. In this case, I think it affected me considerably more than her, because I was angry a[illegible] I expressed that anger so that that didn't happen again. Whereas, the original attitude manifested support and kind of cheering me on, the later responses were if it hadn't been for that armband, I could have sneakers for gym.

Q. Were you able to buy sufficient clothing for your children?

A. They never went without clothing, but we highly simplified what they were wearing.

Q. How many children do you have?

A. I have four.

Q. Were they all living with you when this - -

A. When it first occurred, they were all living with me.

THE COURT: Would you tell me how old they were then, and then were they girls or boys, and tell us anything which

is pertinent.

THE WITNESS: All right. At the time that it occurred, their ages would have been sixteen, fourteen, nine - - I think that's right - - and seven. Approximately right anyway.

THE COURT: I know, Mr. James - -

THE WITNESS: All daughters.

THE COURT: - - fathers never remember ages.

BY MR. NEUBORNE:

Q Were they all girls?

A All girls. And so that we definitely did have to eliminate any concepts of, you know, new clothes because new clothes were nice. We conceived of clothes in a very functional way and - -

Q What about food, did you supplement your food diet in any way?

A The garden that I mentioned, yes.

Q And to what extent did you use the garden to eat from?

A We lived out of the garden in the summertime, did a lot of canning and freezing to prepare for the winter.

Q Did your having been fired have any effect on your relationship with your wife?

A Well, I would say at first it was kind of a solidarity,

but then a lot of questions began to come up regarding my right to punish the family for what I believed and - -

Q. Did these questions cause you any exact anxiety or emotional stress?

A. Yes, they did.

Q. Did you finally resolve those questions?

A. I'm not so sure from a philosophical point of view that the question has been resolved.

Q. Were you upset by your failure to be able to practice your profession?

A. I was upset, it was very emasculating. It is nice to think you can become kind of independent and live off the land, and kind of recycle your life style to simplicity, and just work part-time, this would be a kind of fine accomplishment. The problem is that it doesn't - - that it isn't experientially what it seems to be when you dream of it, and when it is involuntary in a sense, it becomes quite difficult. It makes me personally responsible. It isn't like a cooperative communal act in which a group of people get together and say we are going to do with less. It is rather where I create a situation where we have to do with less. Philosophically, you can say well, maybe I didn't create the situation, it was a situation that Mr. Brown and I cooperated in in creating. It doesn't work that way

psychologically.

MR. NEUBORNE: Thank you, Mr. James. Your Honor, I have no further questions.

THE COURT: All right.

CROSS EXAMINATION BY MR. TREININ:

Q Mr. James, you were raised in Hornell?

A That is right.

Q And that is not too far away from Addison?

A No.

Q About thirty-five miles or so?

A I guess so.

Q So that when you came to teach in Addison, you were sort of coming back home?

A Yes, sure, psychologically.

Q To an area with which you were well acquainted?

A Well, I don't know the Addison area - - I didn't - - I knew the Hornell area.

Q It is not far away, you knew its social and economic makeup?

A Somewhere.

Q As you indicated - -

THE COURT: Mr. Treinin, I think you are referring to the time when he came back?

MR. TREININ: That is right.

THE COURT: That he knew when he did return?

MR. TREININ: That is right.

BY MR. TREININ:

Q And it was quite different than your previous experience in the Bronx?

A Yes.

Q Now, when you went to apply for your position in Addison, what did you do?

A I'm not sure what you mean by the question.

Q Well, what was your hair style, for instance, before you went to apply for that position?

A It was longer than it was when I applied.

Q What did you do?

A I got a haircut.

Q What?

A Got a haircut.

Q You got a haircut, and did you wear the same clothes that you were used to wearing prior to coming to Addison?

A Oh, I wore the same clothes. I bought something new, but there was no change in style. I always wore a shirt, tie and coat.

Q Did you ever tell anybody that you made a special point to change the type of clothes you wore, the ties you wore,

and your haircut, before you came to apply for the Addison job?

A. Like I said, I did not change my style of clothing, I merely put on newer clothing. I never went to teach without a tie on in my life or a coat. I did get a haircut.

Q. As a matter of fact, did you tell anyone that you got a second haircut before you applied?

A. Yes. New York haircuts are notoriously trims. You look in the mirror after it is cut and you wonder whether they did anything or not.

Q. You made a special effort to get a different kind of haircut for Addison?

A. A shorter one.

Q. Did you tell anyone that you wore a narrow tie especially for the occasion?

A. Probably I did, probably told several people that.

Q. Did you tell it to Mr. Richard Harris?

A. Yes, I did.

Q. Who is Richard Harris?

A. He is a writer.

Q. When did you first meet him, may I ask?

A. Heavens, I don't know. Somewhere about a year and a half ago.

Q. Through whose auspices did you meet him?

A. He called me on the telephone.

Q Who asked him to call you?

A Nobody.

Q And what did he tell you on that occasion?

A Said he wanted to talk to me.

Q Did he come down to talk to you?

A He came up to talk to me.

Q Upstate to talk to you?

A Yes.

Q Do you recall when that was?

A Like I say, it was about a year and a half ago.

Q Did he spend any time with you?

A Yes.

Q How long?

A I would say about twenty-four to thirty-six hours.

Q Continuously or over a period of days?

A You are speaking of the first time I talked to him?

Q Yes.

A Okay. I think he stayed with me about twenty-four to thirty-six hours. I mean, of course, we didn't sleep together or anything, but he was staying in Elmira at a motel, and we spent the majority of that period of time in which he was there together.

Q He was interviewing you about this matter?

A He surely was.

Q And you told him the story as you saw it?

A. Surely did.

Q. And he wrote it all down?

A. Yes.

Q. Or was it tape recorded?

A. He wrote it in longhand.

Q. On the first occasion, he spent how many days with you, sir?

A. As I recall it, it was about a day and a half.

Q. Continuously or over a period of time?

A. I'm speaking of the first time.

Q. Yes.

A. It was about a day and a half.

Q. In other words, would you say that you and he talked together for about twelve hours, is that accurate?

A. Well, eight or ten hours anyway.

Q. What was the second occasion when he came to see you?

A. I don't have an exact remembrance. You mean what or when? The when, I'm not sure of. The what, I can deal with better. It was just a continuation so he could talk with me more.

Q. How much of a period elapsed between the two meetings?

A. It was a matter of months. I wouldn't want to guess how many months.

Q. How long did he talk to you on the second occasion?

A. A very similar length of time.

Q About eight or ten hours again?

A Yes, I would say so.

Q Was there a further occasion when he talked to you?

A Yes, he came up a third time.

Q How long did you spend with him on that occasion?

A About the same length of time.

Q So that was about ten or twelve hours again?

A Right.

Q Were there any further occasions?

A I'm not sure whether I saw him a fourth time or not.

Q There might have been?

A There might have been.

Q If there was a fourth time, how much time did you spend with him then?

A It would have been the same pattern once again, I'm sure.

Q Again, this was an interview, I imagine they call it in depth?

A Yes.

Q And, of course, you told him the truth, as you saw it?

A Yes.

Q And after he wrote the articles that subsequently emerged from these interviews, did you check the articles?

A I did.

Q And were they accurate?

A I didn't find any serious inaccuracies, but when I did,

I corrected them.

Q. In other words, if you found any inaccuracies, you corrected them?

A. Only in my statements. I didn't have any right to say anything about the story. I had a right to say something about the statements.

Q. All the statements that Mr. Harris quoted you on in those articles are your statements and are correct?

A. Essentially so. You know, I don't know whether I may have phrased something slightly different than the phraseology that appeared. The essence of the statements are true.

Q. The essence of the statements - -

A. Are accurate, as to my speaking.

Q. So that when he describes the incident of you applying for the Addison job and of getting two haircuts and putting on a different type of suit and tie - -

Q. It wasn't a different type, it was only new from what I normally worked in, not from what I would have been driving upstate in.

Q. Why did you feel it was necessary to change your appearance?

A. I always try to look as good as I can when I go for an employment interview.

Q. And did you - -

A. Except for the haircut.

Q. What about the haircut, tell us about that?

A. I got a haircut because, obviously, I didn't want to be victimized by some kind of a stigma that I wouldn't accept this kind of judgment. I wouldn't want to be in a position in which - - an upstate situation where long hair was much less acceptable than it was in the city.

Q. Did you expect to be victimized by some judgment?

A. I was cautious, I wasn't expectant.

Q. As a matter of fact, when you came to Addison, didn't you find all manner and forms of hair styles?

A. Not as a matter of fact, it wasn't like the city at all.

Q. It wasn't?

A. No.

Q. Were there varying styles of haircuts?

A. There was a variety.

Q. It wasn't all Marine cut?

A. There wasn't any long hair.

Q. It wasn't all Marine cut?

A. No, no.

Q. Pretty much the same as throughout our section of the state?

A. I'm sure Addison is consistent with Hornell, if that's what you mean.

Q. That is right, and Elmira?

A. Somewhat consistent.

Q. Did you feel, as a former minister, that perhaps to some slight extent you were perhaps engaging in some slight deception when you did this?

A. No, not a bit. Why would I be deceiving anyone? That is who I was, I was still me.

Q. Still the same person?

A. Exactly.

Q. Now, let's go back to December of 1969, and try to place ourselves in the tenor of the times. Of course, we were in the midst of the Vietnam war at that time, isn't that true?

A. Right.

Q. And there was much outpouring of indignation against its conduct on the part of many people?

A. I think there was an outpouring of agony as much as indignation.

Q. Do you feel that there was much political turmoil as a result of the conduct of the war?

A. I am sure a lot of political questions were being asked.

Q. There was much effort made to stop it?

A. I'm not trying to equivocate, I'm not sure what you mean by stopping it.

Q. To stop the bombing?

A. I thought you meant to stop the demonstrations.

Q No, to stop the war.

A There was much effort made to appeal to stop it, right.

Q And many millions of people felt that carrying on the war was wrong?

A That is true.

Q You allied yourself with those people?

A Yes.

Q And conversely, there were many millions who felt that the conduct of the war was necessary and proper?

A Yes.

Q And are you aware of the statistics furnished by the Gallop Poll at that time that about seventy odd per cent thought that the pursuit of the war was improper?

MR. NEUBORNE: May I object? I don't understand the relevancy of that question.

THE COURT: Well, it is cross examination. Mr. Treinin, I suppose, as a point.

MR. NEUBORNE: I will withdraw the objection.

THE COURT: All right. I will listen to the cross examination. If you think we go too far, you have the right to object. Presently, I will overrule you.

THE WITNESS: Would you ask the question again?

(Thereupon, the last question was read by reporter.)

THE WITNESS: I am sure there are now. I'm not surprised by the figure.

BY MR. TREININ:

Q In other words, there was a great division of opinion in the country?

A There was a great difference of opinion, right.

Q Many felt one way, and many others felt the other, correct?

A True.

Q And within a year or two previous to that, President Johnson was literally hounded from the second nomination by the people who were against the war? Remember when he refused to run again?

A I am sure the feeling against the war influenced that decision.

Q Then we had just gone through the horrible tragedy of the assassination of Senator Kennedy and Reverend King?

A That is correct.

Q And, as a matter of fact, at this very time, we were going through the trauma of the trial before Judge Hoffman of the Chicago Seven, it started off with eight

and ended with seven, do you remember that?

A. Yes. I'm not sure how much awareness there was nationally of that compared to the war.

Q. It was there, wasn't it?

A. Right.

Q. In other words, were you aware that just about that time the National Guard had been called out in Chicago?

A. Yes.

Q. And that our campuses were really in a ferment during this entire period?

A. Definitely.

THE COURT: Mr. Treinin, do you mean looking back does Mr. James recollect that now or are you asking him to reflect back to what he was thinking about in the fall of 1969?

MR. TREININ: No, I was trying to place our political and social situation at that time.

THE COURT: Well, I think that can be done, but isn't it important here what was in his mind or is it?

MR. TREININ: I am getting to that, your Honor.

BY MR. TREININ:

Q. And in all this, you had been a part of the peace movement, you say, during your earlier days?

A. You mean when I was in the World Peace Commission?

Q. Yes. Did you engage in demonstrations during the time when you were teaching in the Bronx?

A. Yes, Fifth Avenue Peace Parade.

Q. And, as a matter of fact, on the very next day after the first moritorium day when you wore the armband, where were you?

A. I was in Washington.

Q. Doing what?

A. Marching.

Q. With whom?

A. My children and some students from Elmira College.

Q. And five hundred thousand more, sir?

A. At least.

Q. That was the greatest demonstration that we had ever had in the history or Washington, isn't that so?

A. Probably.

Q. And you participated in that?

A. That is correct.

Q. By the way, I don't want you to think for a moment that by my cross examination I don't recognize and perhaps even admire your participation. You understand that,

Mr. James?

A. Yes.

THE COURT: It is a good thing that there isn't a jury here.

BY MR. TREININ:

Q. So when you wore the armband, you took this step in the context of the events of the times, is that right?

A. Surely.

Q. Now, you felt very strongly about the feelings that you testified to at all times, other than moratorium days?

A. Right.

Q. And did it occur to you to show your feelings by wearing the armband on other than moratorium days?

A. I think we covered that this morning.

Q. Cover it for me, please.

A. The armband was obviously a symbol that had been selected by our group, and had been recognized by the pacifistic non-violent groups throughout the nation. We struggled to find something that would make a statement at a time of national reckoning and prayer and vigil and judgment that would not align us in any way with those who thought political or violent solutions would do anything except perpetrate the same evils we were protesting against. Out of that stuggle, we selected the black armband as

that medium of expression, and so obviously, I wore that in a kind of paradoxical way, as far as some of the other protesters are concerned.

Q. Wasn't it in part an expression of protest against the action of the Government?

A. If the Government is involved, they're involved as a responsible party. The protest is against killing, against the killing of American boys. People fail to articulate this. The protest didn't have to do just with the killing of North Vietnamese by Americans, but the killing of people by people.

Q. So you wanted to do everything in your effort to stop the killing?

A. Yes.

Q. The only one who could stop the killing was our Government, taking certain action which you favored, is that correct?

A. Yes.

Q. So that in effect, you were protesting in an effort to have our Government take a certain form of action?

A. Particularly the Executive. It wasn't a declared, legal war, and we were concerned that the Executive be aware of that part, too.

Q. So that you wanted to bring the attention of the Executive that you thought the Executive was unconstitutionally carrying on this war?

A. Well, yes, although the constitutional question is secondary to the humanitarian question.

Q. And the only way we could bring about the humanitarian point of view that you wish to make was by political action upon the part of the Executive?

A. Social action.

Q. What do you mean by social action as distinguished from political?

A. Social action out of a religious conscience to me is radically different than social action for political purposes. One of them seeks a political end, and has a kind of schemata or plan of action and result. That action that comes out of a religious conscience is terribly hard to pin down because of the fact that ultimately it tests - - it trusts in a kind of providential reckoning, because those people who are making the statement of protest can't bring the action through normal channels only, but believe there is a kind of conscience that the person that we are speaking to also has, that he can be spoken to.

Q. Now, can a religious statement in such a context as we are met with in those days be made without political implications?

A. I don't see how it can be made without political implications, as far as ramifications are concerned.

Q So that of necessity, the making of this protest had political implications, did it not?

A For those who were political oriented, yes.

Q And most people are politically oriented, are they not?

A I don't know. I think they are economically oriented myself.

MR. TREININ: Excuse me. May I ask the Court's indulgence?

THE COURT: Take your time.

BY MR. TREININ:

Q Now, in your action in this court, you have made the claim that your actions are based on religious conscience?

A Yes.

Q Is that correct?

A That is correct.

Q For instance, in Paragraph 3 of your complaint, you expressed the intent to express a deep religious conviction as a Quaker?

A Right. I mean I'm believing what you are reading to me.

Q I am being checked by counsel.

THE COURT: Excuse me. Mr. Treinin may proceed in this fashion if he desires. Go ahead, Mr. Treinin.

BY MR. TREININ:

Q And later, in Paragraph 5, you stated or affirmed that you were an active member of the Elmira Quaker Meeting, is that correct?

A. Yes.

Q. And later, in Paragraph 12, that your act was motivated overwhelmingly by religious conscience?

A. That is right.

Q. Now, we had an examination before trial in this matter in my office, do you recall that occasion?

A. Sure.

Q. March 26, 1973?

A. Right.

Q. Did you, on that occasion, state - -

THE COURT: Excuse me, Mr. Treinin. This deposition isn't filed, I don't think.

MR. TREININ: No, it isn't.

THE COURT: Could you mark it as an exhibit, please?

MR. TREININ: Surely. This has more than one deposition. We are just marking the James deposition, correct?

MR. NEUBORNE: You might as well mark the whole thing. I assume we are going to be referring to it.

THE COURT: Yes, so that we know what we are referring to. You can mark it as a defense exhibit.

(Thereupon, transcript referred to was marked Defendant's Exhibit 1 for identification.)

BY MR. TREININ:

Q Did you, on that occasion, tell us that as a matter of fact you had never applied for membership, that you applied only long after the incident which we are talking about?

A Yes, that is what I said, I am sure.

Q So that in some respects, that is contrary to the allegations you made in your complaint?

A Absolutely not.

THE COURT: Excuse me. I didn't get that. You said he applied for membership?

MR. TREININ: Never applied for membership.

THE COURT: In what?

MR. TREININ: In the Quaker meeting.

THE COURT: Which meeting? I understand there was the Long Island meeting - -

MR. TREININ: The Elmira meeting.

THE WITNESS: I think I know what he is trying to say. I'm not sure.

BY MR. TREININ:

Q All right. Were you ever accepted - - was this question asked and did you make the following reply:

"Q Were you ever accepted as a full-fledged member of the meeting?

A I never applied for a membership."

A No, look, that transcript is out of this world in inaccuracies. I have a copy of that, and less of half of that material is correct.

THE COURT: Let's take one thing at a time. Show him that, please.

THE WITNESS: That is unbelievable, that manuscript.

THE COURT: Just wait a minute, Mr. James. Show him the question and answer. If that was incorrect, tell us so.

THE WITNESS: I never applied for membership until my - - there was more to the statement - - until my second or third year. That is what the statement was. I never applied for membership until after the armband case.

THE COURT: Let's take one thing at a time. Mr. Treinin, there is a statement there, a question and answer.

MR. TREININ: May I read it?

THE COURT: Would you read it, please, as it is recorded. Mr. James, wait until after Mr. Treinin finishes the reading.

MR. TREININ: "Q Were you ever accepted as a full-fledged member of the Meeting?" Answer: "I never applied for membership."

THE COURT: Now, was that the question put to you and is that the complete answer?

MR. TREININ: That is the complete answer.

THE WITNESS: All right. There are only two possible answers to that. One possibility that it can be applied to the Flushing Meeting, in which case it would be completely correct as it stands, or it could be an incomplete statement, in which case, it would be that I never applied for membership until after I had been attending

regularly for at least a year. I would have to look up the date. I am sure it was beyond the point at which I wore the armband, which I am sure you are interested in.

MR. TREININ: That is right, as you alleged in your complaint, is that correct?

THE COURT: Can we go on to another question?

MR. TREININ: Yes.

BY MR. TREININ:

Q. Now, in reference to the Quaker philosophy on war, was there a sort of a universal statement that applied to every member as to their participation in any protest, either for or against the war?

A. Do you mean - -

Q. Was there a mandated position on the war?

A. There cannot be a mandate in the Quakers.

Q. Was there a doctrine that applied in reference to the war?

A. Not a doctrine, a tradition.

Q. A tradition, and the tradition, of course, was wholly against any armed conflict?

A. That is right.

Q. Were you bound as an individual by that doctrine or

tradition?

A. No, I am not bound by it.

Q. In other words, every person, as a member of the Quaker faith was obliged to come to his own conclusion on that subject?

A. Each person had to come to his own conclusion, that is correct.

Q. The determination in effect was an individual matter?

A. No, that is not true. It is much more complex than that. It is part of the community, a community of believers. It implies an awful lot of things. Individualism in a sense is a bad word. It should be personal and private, but still communal. The decision is made out of a sense of where the other people in the Meeting are and where you are in your personal convictions. If I had been unable to make a decision, I would have been accepted in the Meeting, though the accepted practice of the Meeting would have been a peace statement.

Q. Didn't Quakers differ among themselves as to their outlook on the war?

A. Quakers differed widely in interpretations of the way to deal with their protest, but there was no division among -- in the New York area Meeting, there was no disagreement as to the fact that they did not want the conflict, the

conflict should be ended.

Q. But as you thought about the great problems that this terrible war presented, didn't you come to an individual position?

A. Yes.

Q. As your own private determination?

A. One's decision should be individual.

Q. And the decision was definitely yours, is that correct?

A. The decision was mine.

Q. That is right, so when we are talking about the religious aspect of your feelings, it really comes down to the fact that these are your own private feelings?

A. Private, but common among the group in certain ways.

Q. Not only confined to the Quakers, but to many other well-intentioned people, millions of them?

A. Though I am not certain about the quality of the peace testimony among the other groups regarding violence.

Q. In other words, you felt that the Quakers were separate and apart in many respects?

A. I think the Quakers were united in this respect. They picked up a lot of people along the way who thought they had the right solution. There were not just Quakers involved. I can remember standing in vigils in Washington with Catholic priests and all kinds of people. But the Quaker position is fundamentally the sense - - that wasn't

something added to Quakerism. George Fox, the founder of Quakerism, the original roots of his conscience were those of non-violence. This isn't the root of any other American religious group.

Q. But ultimately, you arrived at your decision?

A. That is correct.

Q. In arriving at this very grave decision, you used certain criteria, did you not?

A. Right.

Q. As we do in decision-making in any field, correct?

A. Yes.

Q. For instance, did you look at all sides of the issue?

A. I couldn't pretend to know all sides of the issue. I do recall your asking me this question once before, and I pointed out to you at that time that a Quaker doesn't need to study all sides of a war issue to be against a war, because he is against the war regardless of the issues.

Q. Did I ask you this question and did you make this reply: "In order to make an unprejudiced ideal, you have to know all the facts of the situation whether you agree with it or disagree?" And did you make this answer: "Have to know as many as you can. I doubt if you would know all."

A. Somewhat like that, yes.

Q. "All certainly available to you in order to reach this unprejudiced ideal, that is one of the things sought in the Quaker faith?" Your answer was, "Right".

A. Understanding of the situation, right. There, of course, are different situations. War is surely different than many of the areas of community conflict in which you are seeking social knowledge.

Q. Did I ask you this question, "Would you say that if you gave a child only one view -- let's talk about the war which I hope we can talk in the past tense -- only one view, the administration side, could he have reached this unprejudiced ideal, unprejudiced view of his role as a citizen of this country?" And did you answer, "Now, come again." "Q.: If you just gave him one view." "A.: I thought we just covered that by saying we have to have as many facts as possible. Now you are talking about a child in a Friends' Meeting." Did you make that answer?

A. I don't know. Like I say, that manuscript is out of shape.

Q. Well, let's look at it.

THE COURT: Mr. Treinin, I listen to this and it seems to be quite similar to the testimony given now. Of course, you can read it because Mr. James is a party. Read it and make it part of the record. If you are reading to impeach, I find little difference. There may be a shading of a word here and there.

MR. TREININ: I want to know in order to arrive at a decision whether we have to hear all sides.

THE COURT: Mr. James has told us his viewpoint on that already.

MR. TREININ: If he agrees, then I am very happy.

THE WITNESS: There is a difference. In that oral hearing we dealt with two things, we dealt with education and the child's mind in the classroom, and we dealt with a religious decision based on conscience, and we dealt with a kind of syncretizing of the two, in which we talked about the Quaker child and a Quaker Meeting, and I am really confused. With which question are we dealing right now?

BY MR. TREININ:

Q. Ultimately we will come to the child in the classroom, Mr. James. You tell us that according to your belief that any action taken by your country, if unfortunately it involves the destruction of life, you are against?

A. That is correct.

Q. Would that carry over if our country was invaded?

A. Mr. Treinin, I don't have the slightest idea of what I would do.

THE COURT: Mr. Treinin, this sounds to me -- I have had enough of this business in the past -- like the questions that were put

to people when they appeared before Selective Service Boards. I don't want to interrupt your cross examination but I think there is enough material in the record without going through a number of hypothetical things.

BY MR. TREININ:

Q. Now, let's get back to the morning of November 12, 1969 -- November 14th -- after you had the meeting at the Quaker House a few days before when the armbands were made --

A. Right.

Q. -- did you intend when you left the meeting to wear the armband?

A. No. I only -- it was a kind of -- it was marinating in my mind. It was, you know, a kind of gestation, there was no decision made.

Q. When did you make your decision to wear the armband on the 14th, Mr. James?

A. My final decision was made in the morning when I left for school on the 14th.

Q. When you started out from your home?

A. Yes.

Q. It was not made at the meeting held at the Quaker Meeting House several days before?

A. No.

Q. You made it up individually, and separate and apart from the action of the meeting?

A. This is very difficult for me because I don't mean to equivocate, but there is character of decision that is made -- maybe I can make it clearer this way -- I would never have made that decision if I hadn't been through the experience of being an Friend.

Q. Did I ask you this question, "You made it up individually and separately and apart from the meeting? A.: As far as it being a conscience decision on my own, you are right." Did you make that answer?

A. Yes.

Q. Was that a correct answer?

A. Sure, it was a correct answer.

Q. Now, between the two occasions upon which you wore the armband, about approximately a month had passed?

A. Right.

Q. And the events of the armband had received wide publicity in our area?

A. Is that a question?

Q. Yes.

A. Yes.

THE COURT: When you say "our area", you mean Addison?

MR. TREININ: Addison, Corning, Elmira, what we

call the Southern Tier, your Honor.

THE COURT: All right.

BY MR. TREININ:

Q. And when did you make up -- strike that, please. It received a lot of discussion, naturally, throughout the area, and there were letters to the editor and editorials and comments, correct?

A. That is correct.

Q. Now, when did you make up your mind to wear it on the second occasion?

A. On the morning that I left for school.

Q. So that on both occasions is it fair to say that you made up your mind at the last moment, just as you were going to school?

A. Yes, sure.

Q. And on each occasion it was an individual act on your part?

A. It was my act. I, of course, reiterate that it was made out of a social context, context of the social conditions of the day, and in a microcosmic way it was out of the Quaker context. That is also a context, too.

Q. It was not mandated by anyone?

A. Definitely not.

Q. Or any institution?

A. Right.

Q. Now, we made some reference during my cross examination that it is difficult to disassociate any religious action without it having political implications?

A. That is correct.

THE COURT: Mr. Treinin, there is a Doctor Torino on the phone, I think he would like to talk to you. We will take a brea . As soon as you come back, we will continue.

MR. TREININ: Thank you.

THE COURT: We will take a short recess.

(Thereupon the Court was in recess at 2:40 p.m.)

* * * * * * * * * *

(PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 2:50 p.m.)

C H A R L E S J A M E S, called as a witness in his own behalf, and having duly affirmed, resumed and testified further as follows:

BY MR. TREININ:

Q. During that examination, Mr. James, did I ask you this

question, and did you make this reply? "Q.: Then you recognized the fact what you say stems from the religious, to others it might appear to be political implications? A.: I think that is obvious from the case."

A. That is right.

THE COURT: Mr. Treinin, as I said before, I don't want to interrupt your cross examination, but so I can understand this, it seems to me from reading the Court of Appeals decision in this case, and considering the Russo case, and considering the Supreme Court decision in Tinker and other cases, now, you know, I listened to Mr. James' explanation, but those cases, Russo and the others, isn't that on a broader base, in that Miss Russo, for example, her act wasn't religious? I suppose you might characterize it as political or sociologic. So, you know, does it make any difference really what the motive is? We have a symbol here, and a symbol means one thing to the wearer, and it can mean a lot of things to the viewer and, frankly, under the decisions we have, does it make any difference?

MR. TREININ: Yes, ultimately, because I hope this is all background to bring it into the context of the classroom and the position of the teacher vis-a-vis the students, and that is the issue in this case.

THE COURT: How are we going to be able to do that?

MR. TREININ: By showing that really, contrary to the admonition of the Second Circuit, this was a political act, to have political influence on the students, and contrary to the admonition of the State Department of Education, and contrary to the ethical code of the teaching profession, presenting only one side of a highly debatable political issue.

THE COURT: Number one, are we going to have testimony from the pupils?

MR. TREININ: No, but we are going to have testimony from educators.

THE COURT: All right. At least, I understand your point, I am beginning to understand your point. Very well.

MR. TREININ: May I proceed?

THE COURT: Certainly.

BY MR. TREININ:

Q. Was this question asked? "Q.: You appreciate two different people can honestly, seeing one incident, say this is my political conviction, and the other looking at the same action, saying this is my religious action? A.: What happened in my case -- I realize now the fact it was -- my religious action was never accepted as a reality. I think it was automatically accepted as a political one. Therefore, the content of the action, as I told Mr. Neuborne, the content of the act was interpreted for me, instead of my being the interpreter of the act." Was that answer made?

A. Yes, essentially.

Q. "So you recognize the fact that what you claim as your religious affirmation, to another one, totally unprejudiced and totally responsible, may appear as a political affirmation, unless he is good enough to come up to and find out what happened." Was that question and answer made?

A. Yes.

MR. NEUBORNE: Your Honor, I have no objection to offering the whole deposition in evidence.

THE COURT: Mr. Treinin, I see nothing impeaching. I don't know what your purpose is. If you want to read it all --

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